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OFFICE OF THE FEDERAL REGISTER

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OFFICE OF THE FEDERAL REGISTER

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0120]

RIN 3150–AJ42

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Underground Maximum Capacity Canister Storage System, Certificate of Compliance No. 1040

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by adding the Holtec International HI–STORM Underground Maximum Capacity (UMAX) Canister Storage System, Certificate of Compliance (CoC) No. 1040, to the "List of approved spent fuel storage casks." Holtec International intends to provide an underground storage option compatible with the Holtec International HI–STORM FLOOD/WIND (FW) System (CoC No. 1032). The HI–STORM UMAX Canister Storage System stores a hermetically sealed canister containing spent nuclear fuel in an in-ground vertical ventilated module. The HI–STORM UMAX Canister Storage System is designed to provide long-term underground storage of loaded multi-purpose canisters previously certified for storage in CoC No. 1032.

DATES: The final rule is effective November 24, 2014, unless a significant adverse comment is received by October 9, 2014. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2014–0120 when contacting the NRC about the availability of information for this direct final rule. You may access publicly-available information related to this direct final rule by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0120. 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 obtain publicly-available documents online in the ADAMS Public Documents collection 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*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Procedural Background

The NRC is using the "direct final rule procedure" to add CoC No. 1040 to the list of approved spent fuel storage casks because the Holtec International HI–STORM UMAX Canister Storage System is similar to other previously approved spent fuel storage cask systems and, therefore, is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on November 24, 2014. However, if the NRC receives significant adverse comments on this direct final rule by October 9, 2014, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial)

to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

II. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that "the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

III. Discussion of Changes

By letter dated June 29, 2012, and as supplemented on July 16, 2012; November 20 and January 30, 2013; April 2, April 19, June 21, August 28, December 6, December 31, January 13; and January 28, 2014, Holtec International submitted an application to add the HI–STORM UMAX Canister Storage System to the list of approved spent fuel storage casks in 10 CFR part 72. The HI–STORM UMAX Canister Storage System is a spent fuel storage system designed to be in full compliance with the requirements of 10 CFR part 72. Holtec International intends to provide an underground storage option compatible with the Holtec International HI–STORM FW System as described in the Final Safety Analysis Report (FSAR) for the HI–STORM FW System. The underground structure system is described in the FSAR for the HI–STORM UMAX Canister Storage System. The HI–STORM UMAX Canister Storage System stores a hermetically sealed canister containing spent nuclear fuel (SNF) in an in-ground vertical ventilated module (VVM). The HI–STORM UMAX Canister Storage System is designed to provide long-term underground storage of loaded multi-purpose canisters (MPC) previously certified for storage in CoC No. 1032. The HI–STORM UMAX VVM is the underground equivalent of the HI–STORM FW storage module. Although the storage cavity dimensions and the air ventilation system in the HI–STORM UMAX VVM have been selected to enable it to also store all MPCs certified for storage in the HI–STORM 100 storage module, CoC No. 1040 does not approve the storage of all MPCs certified for storage in the HI–STORM 100 storage module in the HI–STORM UMAX VVM at this time. The HI–STORM UMAX Canister Storage System can store either Pressurized Water Reactor or Boiling Water Reactor fuel assemblies in the MPC–37 or MPC–89 models, respectively. The number associated with the MPC is the maximum number of fuel assemblies the MPC can contain in the fuel basket. The external diameters of the MPC–37 and MPC–89 are identical to allow the use of a single storage module design, however the height of the MPC, as well as the storage module and transfer cask, are variable based on the SNF to be loaded.

As documented in the safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC request submitted by Holtec International.

The HI–STORM UMAX Canister Storage System, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into HI–STORM UMAX Canister Storage Systems that meet the criteria of CoC No. 1040 under 10 CFR 72.212.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will add the Holtec International HI–STORM UMAX Canister Storage System design to the listing in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as Compatibility

Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

VII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to add the Holtec International HI–STORM UMAX Canister Storage System to the listing within the "List of approved spent fuel storage casks" as CoC No. 1040. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an

environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule adds CoC No. 1040 for the Holtec International HI–STORM UMAX Canister Storage System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Holtec International intends to provide an underground storage option compatible with the Holtec International HI–STORM FW System.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this CoC addition tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

Holtec International HI–STORM UMAX Canister Storage Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an Independent Spent Fuel Storage Installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the HI–STORM UMAX Canister Storage System would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. In addition, any resulting occupational exposure or offsite dose rates from the use of the HI–STORM UMAX Canister Storage System would remain well within the 10 CFR part 20 limits. Therefore, the proposed addition of CoC No. 1040 will not result in radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in the SER for this addition.

D. Alternative to the Action

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of the addition of CoC No. 1040 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, "List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM UMAX Canister Storage System, Certificate of Compliance No. 1040," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

VIII. Paperwork Reduction Act Statement

This direct final rule does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

X. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214.

On June 29, 2012, and as supplemented on July 16, 2012; November 20 and January 30, 2013; April 2, April 19, June 21, August 28, December 6, December 31, January 13; and January 28, 2014, Holtec International submitted an application to add the HI–STORM UMAX Canister Storage System.

The alternative to this action is to withhold approval of this new design

and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XI. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule adds CoC No. 1040 for the Holtec International HI–STORM UMAX Canister Storage System to the "List of approved spent fuel storage casks."

The addition of CoC No. 1040 for the Holtec International HI–STORM UMAX Canister Storage System was initiated by Holtec International and was not submitted in response to new NRC requirements, or an NRC request for amendment. The addition of CoC No. 1040 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

XII. Congressional Review Act

This action is not a major rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
CoC No. 1040	ML14122A443.
Safety Evaluation Report	ML14122A441.
Technical Specifications, Appendix A.	ML14122A444.
Technical Specifications, Appendix B.	ML14122A442.
Application	ML12363A282.
Application supplemental July 16, 2012.	ML12205A134.
Application supplemental November 20, 2012.	ML12348A483.
Application supplemental January 30, 2013.	ML13032A008.
Application supplemental April 2, 2013.	ML13107B249.
Application supplemental April 19, 2013.	ML13114A191.
Application supplemental June 21, 2013.	ML13175A363.
Application supplemental August 28, 2013.	ML13261A062.
Application Supplemental December 6, 2013.	ML13343A169.
Application supplemental December 31, 2013.	ML14002A402.
Application supplemental January 13, 2014.	ML14015A145.
Application supplemental January 28, 2014.	ML14030A055.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0120. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0120); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c)–(d) (42 U.S.C. 10162(b), 10168(c)–(d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1040 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1040.

Initial Certificate Effective Date: November 24, 2014.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI–STORM UMAX Canister Storage System.

Docket Number: 72–1040.

Certificate Expiration Date: September 9, 2034.

Model Number: MPC–37, MPC–89.

Dated at Rockville, Maryland, this 22nd day of August 2014.

For the Nuclear Regulatory Commission.
Darren B. Ash,
Acting Executive Director for Operations.
[FR Doc. 2014–21418 Filed 9–8–14; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0003; Directorate Identifier 2013–NM–103–AD; Amendment 39–17922; AD 2014–15–19]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–03–23 for all Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream G150 airplanes. AD 2013–03–23 required revising the airplane flight manual (AFM) to include procedures to advise the flightcrew of certain runway slope and anti-ice corrections and takeoff distance values. This new AD requires revising the Performance section of the AFM, which includes the revised procedures. This AD was prompted by the issuance of a revision to the AFM, which modifies runway slope and anti-ice corrections to both V_1 and takeoff distance values. We are issuing this AD to prevent the use of published, non-conservative data, which could result in the inability to meet the required takeoff performance, with a consequent hazard to safe operation during performance-limited takeoff operations.

DATES: This AD becomes effective October 14, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 14, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publications listed in this AD as of March 26, 2013 (78 FR 11567, February 19, 2013).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0003*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com*; Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–03–23, Amendment 39–17357 (78 FR 11567, February 19, 2013). AD 2013–03–23 applied to all Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream G150 airplanes. The NPRM published in the **Federal Register** on January 21, 2014 (79 FR 3339). The NPRM was prompted by the issuance of a revision to the AFM, which modifies runway slope and anti-ice corrections to both V_1 and takeoff distance values. The NPRM proposed to continue to require revising the AFM to include procedures to advise the flightcrew of certain runway slope and anti-ice corrections and takeoff distance values. The NPRM also proposed to require revising the Performance section of the AFM, which includes the revised procedures. We are issuing this AD to prevent the use of published, non-conservative data, which could result in the inability to meet the required takeoff performance, with a consequent hazard to safe operation during performance-limited takeoff operations.

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 01–12–02–02R1, April 23, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> This [CAAI] AD mandates revised limitations in the G150 AFM, pertaining to the Performance Section. Each operator must incorporate Rev.17 to the G150 AFM and remove previous AFM TR 3 dated December 14, 2012.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0003-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 3339, January 21, 2014) or on the determination of the cost to the public.

"Contacting the Manufacturer" Paragraph in This AD

Since late 2006, we have included a standard paragraph titled "Airworthy Product" in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 3339, January 21, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase "its delegated agent" to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 3339, January 21, 2014) about these proposed changes. However, a comment was provided for a similar NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the

following: "The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin."

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it "Contacting the Manufacturer." This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the CAAI, or the CAAI's authorized Designee. It also clarifies that if approved by the CAAI Designee, the approval must include the Designee's authorized signature. Where necessary throughout this AD, we also replaced any reference to approvals of corrective actions with a reference to the Contacting the Manufacturer paragraph.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the CAAI Designee, the approval must include the Designee's authorized signature. The Designee signature indicates that the data and information contained in the document are CAAI-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the Designee's authorized signature approval are not CAAI-approved, unless the CAAI directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are "Required for Compliance" with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM discussed previously, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the "delegated agent" or "DAH with State of Design Authority design organization approval," but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH in the Contacting the Manufacturer paragraph of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 3339, January 21, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 3339, January 21, 2014).

Costs of Compliance

We estimate that this AD affects 67 airplanes of U.S. registry.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,695, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0003*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–03–23, Amendment 39–17357 (78 FR 11567, February 19, 2013), and adding the following new AD:

2014–15–19 Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Amendment 39–17922. Docket No. FAA–2014–0003; Directorate Identifier 2013–NM–103–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 14, 2014.

(b) Affected ADs

This AD replaces AD 2013–03–23, Amendment 39–17357 (78 FR 11567, February 19, 2013).

(c) Applicability

This AD applies to Gulfstream Aerospace LP (Type Certificate previously held by Israel Aircraft Industries, Ltd.) Model Gulfstream G150 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 01, Operations information.

(e) Reason

This AD was prompted by the issuance of a revision to the airplane flight manual (AFM), which modifies runway slope and anti-ice corrections to both V_1 and takeoff distance values. We are issuing this AD to prevent the use of published, non-conservative data, which could result in the inability to meet the required takeoff performance, with a consequent hazard to safe operation during performance-limited takeoff operations.

(f) Compliance

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

(g) Retained AFM Revision

This paragraph restates the actions required by paragraph (g) of AD 2013–03–23, Amendment 39–17357 (78 FR 11567, February 19, 2013). Within 60 days after March 26, 2013 (the effective date of AD 2013–03–23), revise Section V, Performance, of the Gulfstream G150 AFM to include the information in Gulfstream G150 Temporary Revision (TR) 3, dated December 14, 2011. This TR introduces corrections for runway slope. Operate the airplane according to the procedures in this TR.

Note 1 to paragraph (g) of this AD: The AFM revision required by paragraph (g) of this AD may be done by inserting copies of Gulfstream G150 TR 3, dated December 14, 2011, into the AFM. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Gulfstream G150 TR 3, dated December 14, 2011, and the TR may be removed.

(h) New AFM Revision

Within 60 days after the effective date of this AD, revise the Gulfstream G150 AFM to incorporate the information in Section V, Performance, of the Gulfstream G150 AFM G150–1001–1, Revision 17, dated April 17, 2013. Revision 17 of this AFM contains revisions of runway slope and anti-ice corrections to the V_1 and takeoff distance values. Before further flight, after accomplishing the revision, remove Gulfstream G150 TR 3, dated December 14, 2011, or the information contained in Gulfstream G150 TR 3, dated December 14, 2011, from the AFM. Operate the airplane according to the procedures in Section V, Performance, of Gulfstream G150 AFM G150–1001–1, Revision 17, dated April 17, 2013. Revising the AFM to Gulfstream G150 AFM G150–1001–1, Revision 17, dated April 17, 2013, terminates the action required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(j) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Israel Airworthiness Directive 01–12–02–02–R1, dated April 23, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0003-0002*.

(l) Material Incorporated by Reference

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

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

(i) Gulfstream G150 AFM G150–1001–1, Revision 17, dated April 17, 2013.

(ii) Reserved.

(3) The following service information was approved for IBR on March 26, 2013 (78 FR 11567, February 19, 2013).

(i) Gulfstream G150 Temporary Revision 3, dated December 14, 2011, to Section V, Performance, of the Gulfstream G150 AFM.

(ii) Reserved.

(4) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com*; Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*.

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

(6) You may view this service information that is incorporated by reference at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 14, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18311 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0326; Directorate Identifier 2013–CE–051–AD; Amendment 39–17965; AD 2014–18–01]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rockwell Collins TDR–94 and TDR–94D Mode select (S) transponders that are installed on airplanes. This AD was prompted by instances where the TDR–94 and TDR–94D Mode S transponders did not properly respond to Mode S Only All-Call interrogations when the airplane transitioned from a ground to airborne state. This AD requires inspecting the setting of the airplane type code category strapping and requires either modifying the airplane type code category setting or installing the software upgrade to convert the affected transponders to the new part number. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective October 14, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 14, 2014.

ADDRESSES: For service information identified in this AD, contact Rockwell Collins, Inc., Collins Aviation Services, 350 Collins Road NE., M/S 153–250, Cedar Rapids, IA 52498–0001; telephone: 888–265–5467 (U.S.) or 319–265–5467; fax: 319–295–4941 (outside U.S.); email: *techmanuals@rockwellcollins.com;* Internet: *http://www.rockwellcollins.com/Services_and_Support/Publications.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0326; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ben Tyson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316–946–4174; fax: 316–946–4107; email: *ben.tyson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Rockwell Collins TDR–94 and TDR–94D Mode select (S) transponders that are installed on airplanes. The NPRM published in the **Federal Register** on May 22, 2014, (79 FR 29384). The NPRM was prompted by instances where the TDR–94 and TDR–94D Mode S transponders did not properly respond to Mode S Only All-Call interrogations when the airplane transitioned from a ground to airborne state.

We were notified that Bombardier CL604 airplanes in Eurocontrol airspace were not transmitting the appropriate Mode S replies. In at least one case, the flight crews switched to the other installed transponder, resulting in normal operation. Rockwell Collins, Inc. confirmed that other types of airplane could exhibit this same unsafe condition. As a result of the issue in Eurocontrol airspace, EASA issued Airworthiness Directive 2010–0003R1, effective date January 11, 2010.

The TDR–94 and TDR–94D Mode S transponder internal software does not correctly implement the air/ground override function when the airplane type code strapping is set to any value other than (1) or (0) and the airplane rotation speed is greater than 100 knots. The error in the air/ground override function inhibits the Mode S Only All-Call replies.

The NPRM proposed to require inspecting the setting of the airplane type code category strapping and require either modifying the airplane type code category setting or installing the software upgrade to convert the affected transponders to the new part number. We are issuing this AD to correct the unsafe condition on these products.

Comments

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

Request

Kevin Lorrigan requested we add Beechcraft Models B300, B300C, and Hawker 900XP airplanes to paragraph (c), Applicability, to the AD because typically these airplanes are equipped with the TDR–94 or TDR–94D transponders with weight-on-wheels input.

The FAA agrees those airplanes were equipped with the TDR–94 or TDR–94D transponders when they were delivered from the factory. However, we disagree with adding these airplanes to paragraph (c), Applicability, of the AD. After we consulted with Beechcraft and reviewed their production records, we determined these airplanes are unaffected in their original "as-delivered" configurations. The airplanes were delivered with the TDR–94 or TDR–94D transponders, but they were strapped in such a manner that they remain unaffected.

Paragraph (c), Applicability, of this AD is not intended as all-inclusive. Paragraph (c) of this AD states, ". . . transponders that are installed on but not limited to the airplanes . . ." and gives a partial listing of airplanes known to have the affected transponders installed. Due to the possibility of modification of the airplane after delivery, each owner must evaluate the airplane's current configuration to determine compliance with the AD.

We did not change the final rule AD action based on this comment.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial

changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 29384, May 22, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 29384, May 22, 2014).

Costs of Compliance

We estimate that this AD affects 8,000 products installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the setting of the airplane type category strapping.	1 work-hour × $85 per hour = $85	Not applicable	$85	$680,000

We estimate the following costs to do any necessary corrections that will be required based on the results of the inspection. We have no way of determining the number of airplane that might need these corrections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modify the airplane type code category strapping.	1 work-hour × $85 per hour = $85	Not applicable	$85.
Convert the part number of the equipment.	2 work-hours × $85 per hour = $170.	See conversion parts cost table	Varies depending on applicable part number or service bulletin.

CONVERSION PARTS COST TABLE—TDR–94 AND TDR–94D

Starting part number	Service bulletin 505	Service bulletin 507	Service bulletin 508	Service bulletin 509
–007	N/A	$5,886	$12,636	$18,465
–008	$2,323	5,886	3,414	9,429
–108	2,323	N/A	N/A	6,816
–207	N/A	5,886	9,234	15,057
–308	2,323	5,886	3,414	9,429
–309	N/A	5,886	3,414	9,429
–310	N/A	N/A	N/A	6,183
–408	2,323	N/A	N/A	3,414
–409	N/A	N/A	N/A	3,414

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–18–01 Rockwell Collins, Inc.: Amendment 39–17965; Docket No. FAA–2014–0326; Directorate Identifier 2013–CE–051–AD.

(a) Effective Date

This AD is effective October 14, 2014.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to the following Rockwell Collins, Inc. part number (P/N) Mode S transponders that are known to be installed on but not limited to the airplanes listed in paragraphs (c)(2)(i) through (c)(2)(xiv) of this AD, except for those airplanes listed in paragraphs (c)(3)(i) through (c)(3)(vi) of this AD, that have been modified in-production or in-service:

(i) TDR–94: CPN 622–9352–008, 622–9352–108, 622–9352–308, 622–9352–408; and

(ii) TDR–94D: CPN 622–9210–008, 622–9210–108, 622–9210–308, 622–9210–408.

(2) The products listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD may be installed on but not limited to the following airplanes featuring weight-on wheels input to the transponder, certificated in any category:

(i) ATR42 and ATR72;

(ii) Bombardier (Canadair) CL–600–2B16 (604 Variant);

(iii) Bombardier CL–600–2B19 (RJ100 and RJ200);

(iv) Cessna 525, serial numbers (S/N) 525–0600 through 525–0684 (CJ1);

(v) Cessna 525A, S/N 525A–0300 through 525A–0438 (CJ2);

(vi) Cessna 525B, S/N 525B–0001 through 525B–0293 (CJ3);

(vii) Cessna 560, S/N 560–0751 through 560–0802 (Citation Encore);

(viii) Cessna 560XL, S/N 560–6001 and subsequent;

(ix) Dassault Aviation Mystere-Falcon 50;

(x) Dassault Aviation Mystere-Falcon 900;

(xi) Dassault Aviation Falcon 2000;

(xii) Dassault Aviation Falcon 2000EX;

(xiii) Piaggio Aero Industries P.180 (Avanti and Avanti II); and

(xiv) SAAB 2000.

(3) This AD action does not apply to the excepted airplane models, identified in paragraphs (c)(3)(i) through (c)(3)(vi) of this AD, that have been modified in-production or in-service. They do not have the unsafe condition described in this AD.

(i) Dassault airplanes that have been modified in-service or in-production following the applicable Dassault Aviation service information as listed in table 1 of paragraph (c)(3)(i) of this AD.

TABLE 1 OF PARAGRAPH (C)(3)(I) OF THIS AD: EXCEPTED DASSAULT AIRPLANES

Airplane models	Service bulletin	Modification(s)
Mystere-Falcon 50	F50–457	M2966 and M2968
Mystere-Falcon 900	F900–354	M3896
Falcon 900EX	F900EX–239	M3896
Falcon 2000	F2000–312	M2624 and M2632
Falcon 2000EX	F2000EX–043	M2624

(ii) Model ATR 42 airplanes or ATR 72 airplanes that had P/N 622–9210–108 transponders installed in production using ATR modification 05614 or installed in-service using ATR Service Bulletin ATR42–34–0167 or ATR Service Bulletin ATR72–34–1094, as applicable.

(iii) SAAB Model 2000 airplanes that had P/N 622–9210–008 transponders installed in production using SAAB modifications 6231, 6243, and 6249 or installed in-service using SAAB Service Bulletins 2000–34–066, 2000–34–072, and 2000–34–076.

(iv) Bombardier Aerospace (Canadair) airplanes Model CL–600–2B16 (604 Variant) that had P/N 622–9210–008 transponders installed and incorporated the corrective actions recommended in the Bombardier Advisory Wire AW 604–34–0078 using the instructions in Bombardier Aerospace Service Bulletin 604–34–054 (drawing 604–70482 Engineering Order, Revison D–1) or using a service request for product support. Bombardier Aerospace (Canadair) airplanes Model CL–600–2B19 (RJ100 and RJ200) that had P/N 622–9210–008 transponders installed in production using Bombardier Aerospace Modification TC601R16789 or in service using Bombardier Aerospace Service Bulletin 601R–34–142 (Modification TC601R16790).

(v) Cessna Aircraft Company Models 525, 525A, and 525B airplanes that had P/N 622–9352–008 transponders installed in production using Cessna Engineering Change Records (ECRs) 55298, 58654, and 59567; and Model 525B airplanes that had P/N 622–9352–008 transponders installed in service using Cessna Aircraft Company Service Bulletin SB525B–34–03 or SB525B–34–08. Cessna Aircraft Company Models 525, 525A, 525B, 560, and 560XL airplanes that had P/N 622–9210–008 transponders installed in production using Cessna ECRs 55298, 58654, 59567, 56135, and 58032; and Model 525B airplanes that had P/N 622–9210–008 transponders installed in service using Cessna Service Bulletin SB525B–34–03 or SB525B–34–08.

(vi) Piaggio Aero Industries Model P.180 (Avanti) airplanes that had P/N 622–9210–008 transponders installed in production using Piaggio modification 80–0773 or in service using Piaggio Service Bulletin SB–80–0227. Piaggio Aero Industries Model P.180 (Avanti II) airplanes that had P/N 622–9210–008 transponders installed in production using Piaggio modification 80–0588 and 80–0598.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by instances where the TDR–94 and TDR–94D Mode S transponders did not properly respond to Mode S Only All-Call interrogations when the airplane transitioned from a ground to airborne state. We are issuing this AD to detect and correct Mode S transponders that do not respond correctly to Mode S Only All-Call interrogations, which could result in increased pilot and air traffic controller workload as well as reduced separation of airplanes.

(f) Compliance

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

(g) Inspection

Within the next 2 years after October 14, 2014 (the effective date of this AD), inspect the airplane type code category strapping setting for a value of zero (0) or one (1) following Rockwell Collins, Inc. Service Information Letter 07–2, 523–0810069–101000, TDR–94() SIL 07–02, Revision 1, dated September 2, 2008. If the airplane type code category strapping is set to a value of zero (0) or one (1), no further action is required by this AD.

(h) Modification

If the airplane type code category strapping is not set to a value of zero (0) or one (1), within two years after October 14, 2014 (the effective date of this AD), do the actions required in either paragraph (h)(1) or (h)(2), to include all subparagraphs, of this AD.

(1) Modify the airplane type code category strapping setting to a value of zero (0) or one (1) following Rockwell Collins, Inc. Service Information Letter 07–2, 523–0810069–101000, TDR–94() SIL 07–02, Revision 1, dated September 2, 2008.

(2) Install a software upgrade to convert the part numbers of the transponders to the new part numbers using the following Rockwell Collins, Inc. service information, as applicable:

Note 1 to paragraph (h)(2) of this AD: More than one of the bulletins may apply to your particular P/N transponder, but each bulletin brings different capabilities and associated costs. We recommend reviewing each bulletin to determine the optimal choice for your installation.

(i) Service Bulletin 505, 523–0816034–001000, TDR–94()–34–505, dated September 2, 2008;

(ii) Service Bulletin 507, 523–0816423–301000, TDR–94/94D–34–507, Revision 3, dated December 5, 2011;

(iii) Service Bulletin 508, 523–0817821–001000, TDR–94()–34–508, dated September 16, 2009; or

(iv) Service Bulletin 509, 523–0817822–001000, TDR–94()–34–509, dated September 16, 2009.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Ben Tyson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316–946–4174; fax: 316–946–4107; email: *ben.tyson@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Rockwell Collins, Inc. Service Information Letter 07–2, 523–0810069–101000, TDR–94() SIL 07–2, Revision 1, dated September 2, 2008.

(ii) Rockwell Collins, Inc. Service Bulletin 505, 523–0816034–001000, TDR–94()–34–505, dated September 2, 2008.

(iii) Rockwell Collins, Inc. Service Bulletin 507, 523–0816423–301000, TDR–94/94D–34–507, Revision 3, dated December 5, 2011.

(iv) Rockwell Collins, Inc. Service Bulletin 508, 523–0817821–001000, TDR–94()–34–508, dated September 16, 2009.

(v) Rockwell Collins, Inc. Service Bulletin 509, 523–0817822–001000, TDR–94()–34–509, dated September 16, 2009.

(3) For service information identified in this AD, contact Rockwell Collins, Inc., Collins Aviation Services, 350 Collins Road NE., M/S 153–250, Cedar Rapids, IA 52498–0001; telephone: 888–265–5467 (U.S.) or 319–265–5467; fax: 319–295–4941 (outside U.S.); email: *techmanuals@rockwellcollins.com;* Internet: *http://www.rockwellcollins.com/Services_and_Support/Publications.aspx.*

(4) You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on August 28, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21027 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 111201710–4701–01]

RIN 0691–AA82

Direct Investment Surveys: BE–13, Survey of New Foreign Direct Investment in the United States; Correction

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: This final rule corrects: The Regulation Identifier Number (RIN) for this action; the effective date; and the statement that the Office of Management and Budget (OMB) has approved the information collection for the BE–13, Survey of New Foreign Direct Investment in the United States, pursuant to the Paperwork Reduction Act. BEA's information collection request is pending at OMB.

DATES: The effective date of the final rule published on August 14, 2014 (79 FR 47573), will be announced after the Office of Management and Budget approves the Bureau of Economic Analysis' information collection request.

FOR FURTHER INFORMATION CONTACT: Barbara K. Hubbard, Chief, Direct Transactions and Positions Branch (BE–49NI), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9846.

SUPPLEMENTARY INFORMATION: On Thursday, August 14, 2014, BEA published a final rule reinstating in the Code of Federal Regulations BEA's BE–13 Survey of New Foreign Direct Investment in the United States (79 FR 47573). That rule incorrectly identified the Regulation Identifier Number (RIN) as 0691–XC025. The correct RIN for this action is 0691–AA82.

The document also stated that OMB had approved the information collection for BE–13 under OMB control number 0608–0035. This control number has expired, and BEA has requested it be renewed by OMB. That request is currently pending approval at OMB. Once OMB approves the information collection, BEA will publish a document in the **Federal Register** informing the public that the control number has been approved. Until that time, no party is required to provide any information to BEA based on OMB control number 0608–0035.

Finally, the document stated that the final rule is effective on September 15, 2014. The effective date of the final rule will be announced after OMB issues a valid OMB control number for the information collection.

Correction

Accordingly, in final rule FR Doc. 2014–19256, appearing on page 47573 in the issue published on Thursday, August 14, 2014 (79 FR 47573), the following revisions are being made.

1. On page 47573, in the heading of the document, first column, the RIN is revised to read 0691–AA82.

2. On page 47573, the sentence in the second column under DATES is revised to read: "The effective date of this final rule will be announced after OMB issues a valid OMB control number for this information collection."

3. On page 47574, second column under Paperwork Reduction Act, the last sentence of the first paragraph is revised to read: "A new information collection request is pending approval at OMB."

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR 1981 Comp., p. 173); and E.O. 12518 (3 CFR 1985 Comp., p. 348).

Dated: August 25, 2014.

Brian C. Moyer,

Acting Director, Bureau of Economic Analysis.

[FR Doc. 2014–21334 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0691]

RIN 1625–AA08

Special Local Regulation, Hydrocross, Lake Dora; Tavares, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of Lake Dora in Tavares, Florida, during the Hydrocross, a series of high-speed personal watercraft races. The event is scheduled to take place on September 13 and 14, 2014. Approximately 50 vessels are anticipated to participate in the races. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races.

DATES: This rule is effective on September 13 and 14, 2014 and will be enforced daily from 9 a.m. to 5 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0691. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Allan Storm, Sector Jacksonville Office of Waterways Management, U.S. Coast Guard; telephone (904) 564–7563, email *Allan.H.Storm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the Coast Guard did not receive necessary information about the event until July 23, 2014. As a result, the Coast Guard did not have sufficient time to publish a NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Hydrocross.

C. Discussion of the Final Rule

On September 13 and 14, 2014, HXR INC Promotions will host the Hydrocross, a series of high-speed personal watercraft races. The Hydrocross will be held on Lake Dora in Tavares, Florida. Approximately 50 vessels are anticipated to participate in the races. No spectator vessels are expected to attend the Hydrocross.

The rule will establish a special local regulation that encompasses certain waters of Lake Dora in Tavares, Florida. The special local regulation will be enforced from 9 a.m. until 5 p.m. on September 13 and 14, 2014. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation will consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants transiting to and from the race area, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 16 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without being an authorized participant or enforcing the buffer zone, or receiving authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) nonparticipant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Lake Dora encompassed within the special local regulation from 9 a.m. until 5 p.m. on September 13 and 14, 2014. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0691 to read as follows:

§ 100.35T07–0691 Special Local Regulations; Hydrocross, Lake Dora; Tavares, FL.

(a) *Regulated Areas.* The following regulated areas are established as a

special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Lake Dora encompassed within the following points: Starting at Point 1 in position 28°47′57″ N, 81°43′39″ W; thence south to Point 2 in position 28°47′55″ N, 81°43′39″ W; thence east to Point 3 in position 28°47′55″ N, 81°43′22″ W; thence north to Point 4 in position 28°47′58″ N, 81°43′22″ W; thence west back to origin. All persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Lake Dora, excluding the race area, encompassed within the following points: Starting at Point 1 in position 28°47′59″ N, 81°43′40″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone, or authorized participants transiting to or from the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from:

(i) Entering, transiting through, anchoring in, or remaining within the race area unless participating in the race.

(ii) Entering, transiting through, anchoring in, or remaining within the buffer zone, unless enforcing the buffer zone or an authorized race participant transiting to or from the race area.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas to the public by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced daily from 9 a.m. until 5 p.m. on September 13 and 14, 2014.

Dated: August 27, 2014.

T.G. Allan, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2014–21386 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0793]

Drawbridge Operation Regulation; Boeuf Bayou, Amelia, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Company swing span bridge across the Boeuf Bayou, mile 10.2, in Amelia, St. Mary Parish, Louisiana. The deviation is necessary to complete scheduled maintenance and repairs for the continued safe operation of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position for seven consecutive hours.

DATES: This deviation is effective from 7 a.m. through 2 p.m. on September 18, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0793] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *David.M.Frank@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company has requested a temporary deviation from the operating schedule of the swing span railroad bridge across Boeuf Bayou, mile 10.2, in Amelia, St. Mary Parish, Louisiana. The deviation was requested for the purpose of removal and reinstallation of the east end reduction gear box, motor shaft, and also to perform an alignment.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the swing span of the bridge to remain in the closed-to-navigation position from 7 a.m. through 2 p.m. on September 18, 2014. At mean high water, the bridge provides 6.6′ of vertical clearance in the closed-to-navigation position. However, the bridge will be able to open in the event of an emergency.

Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. An alternate route is available by using the GIWW, Morgan City to Port Allen Alternate Route.

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

Dated: August 27, 2014.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2014–21384 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0732]

RIN 1625–AA00

Safety Zone, Tarague Basin; Anderson AFB, GU

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone in the waters off of Tarague Basin, Anderson AFB, Guam, for the safety of waterway users, during U.S. Air Force explosive ordnance disposal operations. The U.S. Air Force plans to engage in explosive ordnance disposal operations starting in August 2014, and continue to do so at varying times weekly, for an indefinite duration. The safety zone is activated, and therefore subject to enforcement, during these operations. When the safety zone is activated for enforcement, all entry into the safety zone (including vessels and persons) is prohibited except by permission from the Captain of the Port or his designated representative. The Coast Guard is implementing this interim rule for the safety of mariners; we encourage comments on this rulemaking as to how we may improve the rule.

DATES: This rule is effective without actual notice September 9, 2014. For the purposes of enforcement, actual notice will be used from August 22, 2014, until September 9, 2014. Comments and related material must be received by the Coast Guard on or before November 10, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2014–0732. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Kristina Gauthier, U.S. Coast Guard Sector Guam at (671) 355–4866, email *Kristina.M.Gauthier@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this interim rule.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

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

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES.** Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Regulatory History and Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard received notice of these explosive ordnance disposal operations on August 4, 2014. The first operation was scheduled for August 8, 2014. Due to this late notice, the Coast Guard did not have time to issue a notice of proposed rulemaking.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** due to the late notice and inherent danger in explosive ordnance disposal. Delaying the effective period of this safety zone would be contrary to the public interest.

C. Basis and Purpose

The statutory basis for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to implement the Ports and Waterways Safety Act. A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety or environmental purposes.

The purpose of this rulemaking is to protect mariners from the potential hazards associated with U.S. Air Force explosive ordnance disposal operations. Approaching too close to such operations could expose the mariner to flying debris or other hazardous conditions.

D. Discussion of the Interim Rule

The Coast Guard was recently made aware that the U.S. Air Force plans to engage in explosive ordnance disposal operations, in the vicinity of Tarague Basin, starting in August 2014, and continue to do so at varying times weekly, for an indefinite duration. In order to protect the public from the hazards of the U.S. Air Force explosive ordnance disposal, the Coast Guard is establishing a safety zone without prior notice and opportunity to comment. This safety zone will be enforced only at times when the orange range flag is hoisted. We estimate the zone will be enforced approximately 6 hours a week.

Enforcement periods will be indicated by a raised orange range flag located on a pole located 1250 feet west of Demo Pit at 13 degrees 35 minutes 59.751 seconds North Latitude and 144 degrees 55 minutes 27.4476 seconds East Longitude. These explosive ordnance disposals will, under normal circumstances happen during daylight hours. In case of an emergency explosive ordnance disposal after daylight hours may occur and the orange range flag will be illuminated.

For the purposes of enforcement, actual notice will be used from August 22, 2014, until this interim rule is published, September 9, 2014, to inform those near the area of the rule. After publication of this rule, we will rely on constructive notice. The first scheduled operation was 7:15 a.m. on August 8, 2014 (Kilo, Local Time).

The Coast Guard is requesting public comment on this interim rule. Please submit any comments and related material on or before November 10, 2014. We may amend or otherwise change the interim rule based on your comments.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard expects the economic impact of this rule to be extremely minimal based on the limited geographic area affected and the limited enforcement times of the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This safety zone will only be enforced during U.S. Air Force explosive ordnance disposal operations. This zone will encompass one mile arc in the water, from the center point, allowing for safe vessel passage outside of the zone.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the closure of the waterfront around Tarague Basin for approximately 6 hours a week. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be made available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1416 to read as follows:

§ 165.1416 Safety Zone; Tarague Basin; Anderson AFB, GU.

(a) *Location.* The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), from the surface of the water to the ocean floor, is a safety zone: A 1-mile radius centered on 13 degrees 35 minutes 59 seconds North Latitude and 144 degrees 55 minutes 38 seconds East Longitude (NAD 1983) including the water arc between points 13 degrees 36 minutes 00 seconds North Latitude, 144 degrees 56 minutes 32 seconds East Longitude and 13 degrees 36 minutes 12 seconds North Latitude, 144 degrees 54 minutes 48 seconds East Longitude (NAD 1983).

(b) *Enforcement period.* This section will be enforced only during U.S. Air Force explosive ordnance disposal operations and only when an orange range flag is hoisted 1250 feet west of the Demo Pit at 13 degrees 35 minutes 59.751 seconds North Latitude and 144 degrees 55 minutes 27.4476 seconds East Longitude. In case of an emergency, an explosive ordnance disposal after daylight hours may occur in which case the orange range flag will be illuminated.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply to the zone described in paragraph (a) of this section. Entry into, transit through or within this zone is prohibited unless authorized by the COTP or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this safety zone.

(e) *Waiver.* The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 22, 2014.

Brenden J. Kettner,

Commander, U.S. Coast Guard, Captain of the Port Guam, Acting.

[FR Doc. 2014–21382 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0805]

RIN 1625–AA00

Safety Zone; Vigor Industrial Ferry Construction, West Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the West Duwamish Waterway in Seattle, Washington due to scheduled drydock movement at Vigor Industrial. The safety zone is necessary to ensure the safety of the maritime public and workers involved in the drydock

movement. The safety zone will prohibit any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or a Designated Representative.

DATES: This rule is effective from September 17, 2014 to September 18, 2014. This rule will be enforced from 11:00 a.m. until 6:00 p.m. on September 17, 2014, and from noon until 6:30 p.m. on September 18, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0805]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Kenneth Hoppe, Waterways Management Division, Coast Guard Sector Puget Sound, Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable to do so. Delaying promulgation may result in injury or damage to persons and vessels since the ferry construction is scheduled to occur before a comment period would end and a Final Rule could be published. Additionally, the construction activity encompassed by this safety zone cannot be rescheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date until 30 days after publication would be impracticable, as this delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the 30-day period.

B. Basis and Purpose

The legal basis for this rule is provided by 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is to ensure the safety of workers and the maritime public.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a safety zone encompassing all waters of the West Duwamish Waterway in Seattle, Washington, adjacent to the northern tip of Harbor Island in Seattle, WA.

Vessels wishing to enter the zone must request permission for entry by contacting the Joint Harbor Operations Center at 206–217–6001 or the Vessel Traffic Service Puget Sound on VHF Channel 14. If permission for entry is granted vessels must proceed at a minimum speed for navigation.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the safety zone created by this rule. This rule will not have a significant economic impact on a substantial number of small entities, although the safety zone will apply to the entire width of the waterway, the zone will be enforced for a limited period of time, and vessel traffic will be allowed to pass through the safety zone with the permission of the Captain of the Port or a Designated Representative.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–280 to read as follows:

§ 165.T13–280 Safety Zone; Vigor Industrial Ferry Construction, West Duwamish Waterway, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35′04″ N, 122°21′30″ W thence westerly to 47°35′04″ N, 122°21′50″ W thence northerly to 47°35′19″ N, 122°21′50″ W thence easterly to 47°35′19″ N, 122°21′30″ W thence southerly to 47°35′04″ N, 122°21′30″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or a Designated Representative. See 33 CFR Part 165, Subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the Joint Harbor Operation Center at 206–217–6001 or the Vessel Traffic Service Puget Sound on VHF channel 14.

(c) *Enforcement period.* The safety zone created in this rule is enforced from 11:00 a.m. until 6:00 p.m. on September 17, 2014, and from noon until 6:30 p.m. on September 18, 2014 unless cancelled sooner by the Captain of the Port.

Dated: August 26, 2014.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2014–21387 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0096; FRL–9916–32–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revision to Control Volatile Organic Compound Emissions from Storage Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Texas State Implementation (SIP) revision for control of volatile organic compound (VOC) emissions from storage tanks. The revision implements additional controls in the Dallas-Fort Worth 1997 ozone nonattainment area (DFW area); modifies control requirements in the DFW area, the Houston-Galveston-Brazoria ozone nonattainment area (HGB area), the Beaumont-Port Arthur area (BPA area) and El Paso, Gregg, Nueces and Victoria Counties; and makes non-substantive changes to VOC control provisions that apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio and Travis Counties. In addition, EPA finds that the SIP revision implements serious area reasonable available control technology (RACT) controls for the VOC storage source category in the DFW area and continues to implement severe area RACT for this source category in the HGB area as required by the Clean Air Act (CAA).

DATES: This rule is effective on November 10, 2014 without further notice, unless EPA receives relevant adverse comment by October 9, 2014. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0096, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions.
- *Email:* Mr. Carl Young at *young.carl@epa.gov.*
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2012–0096. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Carl Young, (214) 665–6645, *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Table of Contents

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA approved SIP regulations and control strategies are federally enforceable. As needed, States revise the SIP as needed and submit revisions to EPA for approval.

B. SIP Revision Submitted on January 17, 2012

A SIP revision for controlling VOC emissions from storage tanks was adopted by Texas on December 7, 2011, and submitted to us on January 17, 2012. VOCs are an "ozone precursor", as they react with oxygen, nitrogen oxides (NO_X) and sunlight to form ozone. Controlling sources of VOC and NOX emissions can lower ozone levels in the ambient air.

The revision amends Title 30, Chapter 115 of the Texas Administrative Code (30 TAC 115) to (1) revise §§ 115.110, 115.112–115.117, and 115.119, and (2) add new §§ 115.111 and 115.118. The revision (1) implements additional VOC controls for storage tanks in the DFW area; (2) modifies VOC control requirements in the DFW area, the HGB area, the BPA area and El Paso, Gregg, Nueces and Victoria Counties and (3) makes non-substantive changes to VOC control provisions that apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio and Travis Counties.

The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant Counties. The DFW area was reclassified as serious ozone nonattainment for the 1997 ozone standard (75 FR 79302, December 20, 2010). The SIP revision for storage tanks was adopted by Texas to meet the CAA RACT requirements for the VOC storage emission source category in serious ozone nonattainment areas. In the DFW area the revision (1) requires control of VOC flash emissions from storage tanks in the DFW area that might otherwise emit 50 tons per year (tpy) of VOC or more, (2) adds requirements for low-leaking storage tank fittings and (3) limits situations when a floating roof storage tank is allowed to emit VOCs because the roof is not floating on the stored VOC liquid.

The revision also adds a requirement for the DFW and HGB areas that a vapor recovery unit used for VOC control must be designed to process all VOC vapor generated by the maximum crude oil and condensate throughput of the storage tank and must transfer recovered vapors to a pipe or container that is vapor-tight. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. The HGB area is classified as a severe ozone nonattainment area for the 1997 ozone NAAQS (73 FR 56983, October 1, 2008).

In the DFW, HGB and BPA areas and in El Paso, Gregg, Nueces and Victoria Counties the revision (1) adds an explicit requirement that any flare used for control must be designed and

operated according to 40 CFR 60.18(b)—(f) as amended through December 22, 2008, and (2) amends monitoring and testing requirements that ensure effectiveness of VOC controls. The BPA area consists of Hardin, Jefferson, and Orange Counties.

VOC control requirements for storage tanks also apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The revision did not substantially change requirements for these counties.

The SIP revision submitted by Texas may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2012–0096.

C. CAA Requirements for the SIP Revision

The primary CAA requirements pertaining to the SIP revision submitted by Texas are found in CAA sections 110(l) and 182(b)(2). CAA section 110(l) requires that a SIP revision submitted to EPA be adopted after reasonable notice and public hearing. Section 110(l) also requires that we not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 182(b)(2) requires that ozone nonattainment areas classified as moderate or above implement RACT controls on all major VOC and NO_X emission sources and on all sources and source categories covered by a control technique guideline (CTG) issued by us. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979). The CTG and Alternative Control Technique (ACT) documents that we issue provide states with guidance concerning what types of controls could constitute RACT for a given source category. The documents we have issued pertaining to storage tanks are (1) Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036, December 1977), (2) Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047, December 1978) and (3) Alternative Control Techniques Document—Volatile Organic Liquid Storage In Floating and Fixed Roof Tanks (EPA–453/R–94–001, January 1994). These documents are accessible online at *www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html.* Because the DFW area was classified as a serious ozone nonattainment area, a major source is a source having the potential to emit 50 tpy of VOC or more (CAA 182(c)). Because the HGB area is classified as a severe ozone nonattainment area, a major source is a source having the potential to emit 25 tpy of VOC or more (CAA 182(d)).

II. EPA's Evaluation

VOC flash emissions occur during transfer of the VOCs from a higher pressure storage tank to a lower pressure tank, reservoir, or other container. Floating roof landing loss emissions occur when the liquid level in a floating roof tank is lowered and the roof rests (lands) on the legs, or supports, rather than on the liquid, severely limiting the VOC control efficiency of the floating roof. The storage tank requirements, to control flash emissions, use low-leaking tank fittings and further limit emissions from floating roof storage tanks were previously implemented in the HGB area and approved by us as RACT (75 FR 15348, March 29, 2010). For the DFW area, we previously found that Texas rules for storage tanks met RACT requirements (64 FR 3841, January 26, 1999 and 74 FR 1903, January 14, 2009). The RACT rules must address major sources that have the potential to emit 50 tpy of VOC or more in the DFW area (serious area requirement) and 25 tpy of VOC or more in the HGB area (severe area requirement).

Our evaluation found that the revision to the Texas SIP (1) improves the rules that were previously approved, (2) results in additional VOC reductions in the DFW area and (3) ensures that RACT is met for storage tanks with flash emissions in the DFW area and continues to be met in the HGB area. Additionally we found that (1) Texas adopted after reasonable notice and public hearing and (2) approval would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. A technical support document (TSD) was prepared which details our evaluation. Our TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2012–0096.

III. Final Action

We are approving a Texas SIP revision for control of VOC emissions from storage tanks adopted on December 7, 2011, and submitted on January 17, 2012. The revision (1) revises 30 TAC §§ 115.110, 115.112–115.117, and 115.119 and (2) adds new 30 TAC §§ 115.111 and 115.118. The revision (1) implements additional VOC controls for storage tanks in the DFW area; (2) modifies VOC control requirements in the DFW area, the BPA area, the HGB area and the counties of El Paso, Gregg, Nueces and Victoria and (3) makes non-substantive changes to VOC control provisions that apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio and Travis Counties. In addition, we find that this revision implements serious area RACT controls for the VOC storage source category in the DFW area for the 1997 ozone NAAQS and continues to implement severe area RACT controls for this source category in the HGB area.

We are publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on November 10, 2014 without further notice unless we receive relevant adverse comment by October 9, 2014. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 22, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270 (c), the table titled "EPA Approved Regulations in the Texas SIP" is amended by revising the entries for sections 115.110, 115.112 through 115.117, and 115.119 and adding in sequential order new entries for sections 115.111 and 115.118.

The amendments read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter B—General Volatile Organic Compound Sources				
Division 1: Storage of Organic Compounds				
Section 115.110	Applicability and Definitions	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.111	Exemptions	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.112	Control Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.113	Alternate Control Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.114	Inspection Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.115	Monitoring Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.116	Testing Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 115.117	Approved Test Methods	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.118	Recordkeeping Requirements	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
Section 115.119	Compliance Schedules	12/1/2011	9/9/2014 [Insert FEDERAL REGISTER citation].	
*	*	*	*	*

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[FR Doc. 2014–21306 Filed 9–8–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–118]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Technical amendments.

SUMMARY: The Federal Communications Commission (Commission) published in the **Federal Register** on August 28, 2014, 79 FR 51450, amending its rules for Internet Protocol Captioned Telephone Service (IP CTS). That document inadvertently removed § 64.604(c)(11)(iv) of the Commission's rules. This document corrects the final regulations by adding back that section.

DATES: Effective September 9, 2014.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2235 (voice), or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** on August 30, 2013, 78 FR 53684, adding § 64.604(c)(11)(iv) of its rules for IP CTS. In FR Doc. 2014–20433, published in the **Federal Register** on August 28, 2014, 79 FR 51450, § 64.604(c)(11)(iv) was inadvertently removed. This correction reverses that removal and adds § 64.604(c)(11)(iv) as published on August 30, 2013, 78 FR 53684.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 64 is corrected by making the following technical amendment:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by adding paragraph (c)(11)(iv) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(11) * * *

(iv) IP CTS providers shall maintain, with each consumer's registration records, records describing any IP CTS equipment provided, directly or indirectly, to such consumer, stating the amount paid for such equipment, and stating whether the label required by paragraph (c)(11)(iii) of this section was affixed to such equipment prior to its provision to the consumer. For consumers to whom IP CTS equipment was provided directly or indirectly prior to the effective date of this paragraph (c)(11), such records shall state whether and when the label required by paragraph (c)(11)(iii) of this section was distributed to such consumer. Such records shall be maintained for a minimum period of five years after the consumer ceases to obtain service from the provider.

* * * * *

[FR Doc. 2014–21053 Filed 9–8–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0103; 4500030113]

RIN 1018–AZ10

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Agave eggersiana and Gonocalyx concolor, and Threatened Species Status for Varronia rupicola

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973, as amended (Act), for *Agave eggersiana* (no common name) and *Gonocalyx concolor* (no common name), and threatened species status for *Varronia rupicola* (no common name). These three plants are endemic to the Caribbean. The effect of this regulation will be to add these species to the List of Endangered and Threatened Plants.

DATES: This rule is effective October 9, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/caribbean/es.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone 787–851–7297.

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone 787–851–7297; or facsimile 787–851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule lists *Agave eggersiana* (no common name) and *Gonocalyx concolor* (no common name) as endangered species, and *Varronia rupicola* (no common name) as a threatened species under the Act. Elsewhere in today's **Federal Register**, we designate critical habitat for *Agave eggersiana, Gonocalynx concolor,* and *Varronia rupicola* under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that listing is warranted for these species, which are currently at risk throughout all of their respective ranges due to threats related to:

- *Agave eggersiana*—potential future development for residential, urban, and tourist use; agriculture use; dropping of debris; competing nonnative plants; fires; hurricanes; predation; and disease cause by insects (weevils).
- *Goncalyx concolor*—installation or expansion of telecommunication towers, road improvement, vegetation management, and small number of individuals and populations.
- *Varronia rupicola*—loss of habitat due to urban development, right-of-way development and maintenance, deforestation, and hurricanes; and inadequate existing regulatory mechanisms (lack of enforcement).

Peer review and public comment. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all other comments and information we received during the comment period.

Previous Federal Action

Please refer to the proposed listing rule for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* (78 FR 62560; October 22, 2013) for a detailed description of previous Federal actions concerning this species.

Summary of Comments and Recommendations

In the proposed rule published on October 22, 2013 (78 FR 62560), we requested that all interested parties submit written comments on the proposal by December 23, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Virgin Islands Daily News and Primera Hora. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from nine knowledgeable individuals with scientific expertise that included familiarity with *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* and their habitats, biological needs, and threats. We received responses from one peer reviewer.

We reviewed all comments received for substantive issues and new information regarding the listing of *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* The peer reviewer generally concurred with our conclusions in the proposed rule.

Public Comments

During the public comment period, we received one comment letter that addressed the proposed listing and the proposed critical habitat designation. We did not receive any requests for a public hearing. Comments pertaining to the critical habitat designation are addressed in that final rule, which is published elsewhere in today's **Federal Register**. The letter received regarding the proposed listing supports the listing and provided suggestions to improve the final rule.

Comment on Climate Change and Our Response

Specifically, the one substantive comment on the listing proposal we received stated that we should analyze climate change threats through the year 2100 at minimum. We do not have information to analyze the impacts of climate change through the year 2100. We evaluated climate change with the best scientific and commercial information available. At the moment, there are no specific studies discussing the projected impacts on any of these three species or their habitats. We discuss how changes caused by climate change may impact the three Caribbean plants in our threat assessment (October 22, 2013; 78 FR 62560) and we examine the potential consequences to these species and their habitats that rise from changes in environmental conditions associated with various aspects of climate change (i.e., intensity of hurricanes and tropical storms, followed by extended period of drought), and how, in combination with other factors, climate change can increase the impacts on the species. As additional information becomes available, we will continue to address this threat, and develop actions to minimize the impact of climate change during the development of the recovery plan for the three Caribbean plants.

Summary of Changes From Proposed Rule

In this final rule, we made no substantive changes to the proposed rule.

Background

Agave eggersiana

Agave eggersiana is a flowering plant of the family Agavaceae (century plant family) endemic to the island of St. Croix in the U.S. Virgin Islands (USVI). It is currently known from coastal cliffs with sparse vegetation and dry coastal shrubland vegetation communities within the subtropical dry forest life zone of St. Croix, USVI (Ewel and Whitmore 1973, p. 72). The coastal cliffs where *Agave eggersiana* occurs are dominated by rocky formations and areas with less than 10 percent vegetative cover. These coastal cliffs are exposed to extremes of wind, salt spray, and low moisture, and they are usually sparsely vegetated with a canopy less than 3.3 feet (ft) (1 meter (m)) in height (Gibney *et al.* 2000, p. 7; Moser *et al.* 2010, Appendix A–11). It is distinguished from other members of

the Agavaceae family by its acaulescent (without an evident leafy stem), non-suckering growth habit (vegetative reproduction that does not form offshoots around its base), and its fleshy, nearly straight leaves with small marginal prickles of 0.04 inches (in) (0.1 centimeters (cm)) long that are nearly straight (Britton and Wilson 1923, p. 156; Proctor and Acevedo-Rodríguez 2005, p. 118). Its flowers are deep yellow and 2.0 to 2.34 in (5 to 6 cm) long. After flowering, the panicles (inflorescence) produce numerous small vegetative bulbs (bulbils), from which the species can be propagated (Proctor and Acevedo-Rodríguez 2005, p. 118). *Agave eggersiana* is not known to produce fruit, and like other *Agave* species, is monocarpic, meaning the plant dies after producing the spike or inflorescence. Furthermore, based on observations of cultivated plants, *A. eggersiana* requires at least 10 to 15 years to develop as a mature individual and to produce an inflorescence (David Hamada, St. George Village Botanical Garden, pers. comm., 2010).

Gonocalyx concolor

Gonocalyx concolor was described in 1970, as a new species of the genus *Gonocalyx,* family Ericaceae, for Puerto Rico (Nevling 1970, p. 221). *G. concolor* is similar to *G. portoricensis,* differences in distribution and flower morphology indicate that they are well-differentiated species (Nevling 1970, p. 224). *G. concolor* is a small evergreen shrub, mainly epiphytic (grows on the trunks of trees) or clambering (uses other vegetation as support), which may reach 15 ft (4.7 m) in length (Acevedo 2005, p. 227). It has been described as endemic from the elfin forest type at Cerro La Santa and from the ausubo (*Manilkara bidentata*) forest type at Charco Azul, both within the lower montane (an altitudinal zone in mountainous region characterized by distinctive flora and forest structure) very wet forest life zone in the Carite Commonwealth Forest (Ewel and Whitmore 1973, p. 41).

Varronia rupicola

Varronia rupicola was traditionally lumped into the genus *Cordia.* It has been identified in southwestern Puerto Rico, Vieques Island, and Anegada Island. It occurs on sites that lie within the subtropical dry forest life zone overlying a limestone substrate (Ewel and Whitmore 1973, p. 72). *Varronia rupicola* is a large shrub reaching up to 16 ft (5 m) in height. The alternate leaves are ovate to elliptic, 0.8 to 3.5 inches (in) (2 to 9 centimeters (cm)) long with an acute apex, rounded to obtuse at the base, and chartaceous (papery).

Please refer to the proposed listing rule for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* (October 22, 2013; 78 FR 62560) for the complete background information of the species.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination.

Please refer to the five-factor analysis in the proposed rule under Summary of Factors Affecting the Species for a more detailed discussion for each species' status assessment (October 22, 2013; 78 FR 62560). Our assessment evaluated the biological status of the species and threats affecting its continued existence. The assessment was based upon the best available scientific and commercial information. A summary of these factors follows.

Summary of Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Agave eggersiana

The *Agave eggersiana* population found in Great Pond is the only one located in a conservation area. The remaining populations occur within privately owned lands and are threatened by development, or are growing in areas that are already developed and managed as tourism and residential projects and that will not support the continued existence of the plants. Based on information reported by the University of the Virgin Islands' Conservation Data Center (USVI–CLWUP 2004), at least three of the populations (i.e., Protestant Cay, Gallows Bay, and Manchenil Bay) lie within areas identified by the Department of Planning and Natural Resources (DPNR) as high-density land use areas, and thus have a higher susceptibility to development in the near future. The coastal areas that harbor suitable habitat for the species are currently subject to urban and tourist development (O. Monsegur and M. Vargas, Service, pers. obs., 2010 and 2013). At least two proposed development projects have been identified within suitable habitat for the species (i.e., C&R Robin, LLC, and Seven Hills Beach Resort and Casino) (Weiss, CBD, pers. comm., 2010). Current information regarding the status of these development projects is not available to the Service.

The population at Protestant Cay has been affected by construction and management activities associated with the current use of the area, i.e., the disposal of garden debris from a hotel in the species' known habitat (O. Monsegur and M. Vargas, Service, pers. obs., 2010). As *Agave eggersiana* relies on asexual reproduction, the species depends on the bulbils becoming established. Covering the bulbils with debris may result in subsequent mortality of the bulbils and lack of natural recruitment, thus affecting the long-term survival of this population. Moreover, individuals located on the edges of the population are pruned as part of the gardens' maintenance. This practice may result in mortality or mutilation of individuals because the species is monopodial (single growth axis). The population at Protestant Cay is also threatened by competition with nonnative plant species. In this case, habitat modifications from urban development (e.g., road) and garden maintenance have created conditions for the establishment of invasive, nonnative species. Also, the undeveloped habitat on the cay is being rapidly colonized by nonnative species (see Factor E discussion, below). *A. eggersiana* plants also seem to be stressed by competition with nonnative plants.

Another modification of habitat in the area was a sand ramp constructed in 2011, on the northeast side of the cay (T. Cummins and W. Coles, DPNR, pers comm., 2011; R. Platenberg and T. Cummins, DPNR, pers. comm., 2012; Zegarra, Service, pers. comm., 2012). It was documented that at least five individuals of *Agave eggersiana* were crushed or otherwise impacted by the excavation work (R. Platenberg and T. Cummins, DPNR, pers. comm., 2012).

The individuals located at Gallows Bay are within a developed residential complex that has the potential for future expansion, and thus may affect *Agave eggersiana* (O. Monsegur and M. Vargas, Service, pers. obs., 2010 and 2013). Moreover, the Gallows Bay area does not contain additional habitat to allow

for population expansion. Remaining forested areas surrounding this location are characterized by an abundance of nonnative species. The small pockets that could be colonized by bulbils are occupied by *Sansevieria cylindrica* (African spear), a nonnative plant species that tends to form a complete cover of the understory (see Factor E discussion, below).

The area from Cane Garden Bay to Manchenil Bay on the south coast of St. Croix harbors four of the known natural populations of *Agave eggersiana* (Manchenil Bay, Vagthus Point, Cane Garden, and South Shore). According to DPNR personnel (Valiulis, pers. comm., 2010), these areas are advertised by realtors for tourism and residential development. Furthermore, the areas along the south coast that have not been developed are used for cattle or hay production, minimizing the recovery of native vegetation and, therefore, the habitat for *A. eggersiana* (O. Monsegur and M. Vargas, Service, pers. obs., 2010 and 2013). The development of tourist and residential projects in these coastal areas may result in the extirpation of some populations or, at the least, will reduce the chances of the populations to expand or to colonize other areas. The effects of development projects are exacerbated by the low potential for natural recruitment due to the small number of populations and individuals.

The population of Great Pond is located between the entrance road of the East End Marine Park office and a private property currently advertised for sale. The population seems to be healthy based on the presence of different size plants and evidence of recent flowering events. However, the area near the population is mowed, and the access road limits the expansion of the population. Furthermore, the property adjacent to the population is privately owned and currently for sale (O. Monsegur and M. Vargas, Service, pers. obs., 2010 and 2013). The possible use of the area for additional residential or tourist development may affect the *Agave eggersiana* population. Owners will likely manage their properties as landscapes, which could lead to land clearing, additional mowing, other maintenance activities, and the introduction of nonnative plants. Moreover, the abundance of grasslands and the dominance of the nonnative plant *Megathyrsus maximus* (guinea grass) make the population of *A. eggersiana* susceptible to human-induced fires (addressed under Factor E, below).

The threats of possible construction and developments, and the current management of the habitat of the populations, may further limit the species. Direct consequences can be expected as impacting (harming) the individuals (e.g., cutting or mowing), while indirect consequences can be expected to create a habitat disturbance where nonnative plants can overpower *Agave eggersiana*. Currently, there are ongoing impacts on various populations that are expected to continue into the future.

Gonocalyx concolor

Habitat destruction and modification have been identified by species expert as the main threat to *Gonocalyx concolor* (Proctor 1992, p. 3; O. Monsegur, UPRM, unpubl. data, 2006; C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). In 1974, the Commonwealth of Puerto Rico granted special use permits for the construction of telecommunications facilities, and governmental and recreational facilities, within *G. concolor* habitat, affecting approximately 107 ac (43.5 ha) of lower montane very wet forest (Silander *et al.* 1986, p. 178). Currently known populations of *G. concolor* at Cerro La Santa are found in remnants of elfin forest vegetation located adjacent (less than 246 ft (75 m)) from telecommunication facilities, and at the edges (less than 9.8 ft (3 m)) of the road that provide access to the telecommunication facilities (C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). Below we discuss the three factors that may affect the current habitat or range of *G. concolor:* (1) Installation of telecommunication towers; (2) road improvement; and (3) vegetation management.

Land-use history of Cerro La Santa has shown that installation of telecommunication facilities for television, radio, and cellular communication, and for military and governmental purposes, has adversely impacted *Gonocalyx concolor*'s habitat (Silander *et al.*, 1986, p. 178) and, although not documented, presumably has directly affected individuals of the species. George Proctor (1992, p. 3) stated that the construction of a paved road and gigantic telecommunication towers on the summit ridge of Cerro La Santa destroyed much of the natural population of this species. Currently, the telecommunication tower and its associated facilities (i.e., access roads, security fences, guy wires) occupy approximately 6.1 acres (ac) (2.5 hectares (ha)) of the elfin forest in Cerro La Santa; this is habitat that *G. concolor* may have occupied in the past (C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). Although the populations at Cerro La Santa are located within a Commonwealth forest, this area is subjected to development for expansion of telecommunication infrastructure because permits to build new communication facilities or expand currently existing ones within or near Commonwealth forests are prevalent (DNER 2004a, p. 2). Expansion of the existing telecommunication facilities may result in loss of 27 individuals of *G. concolor* and their habitat. In Puerto Rico, towers for cellular communication, radio, television, and military and governmental purposes have represented a threat to those plant species that happen to occur only on mountaintops. The proliferation of these antennas has increased with the advent of cellular phone and related technologies. While the towers themselves may not occupy a very large area, construction activities, access roads, and other facilities have a much wider impact, resulting in the elimination of potential habitat for the species.

For the above reasons, we determined that installation of additional communications towers or expansion of the existing one at Cerro La Santa is a threat to *Gonocalyx concolor* by direct mortality and due to permanent loss, fragmentation, or alteration of its habitat.

Construction of a new access road and improvement of the existing access road to the existing communication facilities have been identified as a factor that could directly (destruction of individuals) or indirectly (slope instability and habitat degradation) reduce the number *Gonocalyx concolor* and its habitat at Cerro La Santa (Proctor 1992, p. 3; C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). Further, expanding the road that provides access to the telecommunication facilities may negatively affect the species' habitat and could result in loss of 11 mature individuals of *G. concolor* (C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). Additionally, clearing the native vegetation along the road may facilitate and accelerate colonization of invasive vegetation towards *G. concolor* habitat (see Factor E discussion, below). Destruction or modification of this kind of habitat may be irreversible. Therefore, the microhabitat conditions necessary for the recovery of the species may be lost if the habitat is modified for the expansion of the existing telecommunications facilities or construction of new communication facilities.

Vegetation management around the existing telecommunication towers and associated facilities and along the existing power lines that energize these facilities is a threat to *Gonocalyx concolor* and its habitat (C. Pacheco and O. Monsegur, Service, unpubl. report, 2013, p. 3). Telecommunication companies periodically remove vegetation along the access roads, around the security fences, and under the guy wires (tensors) that are anchored in the forest. Additionally, maintenance staff of the Puerto Rico Energy and Power Authority (PREPA) periodically trim and clear the vegetation under the existing power lines that provide energy to the telecommunication facilities and adjacent communities. Presently, the Puerto Rico Department of Natural and Environmental Resources (DNER) is aware of the presence of *G. concolor* and the need to implement conservation measures for the species in Cerro La Santa. The existing telecommunication facilities and PREPA usually have a restricted perimeter delimiting the area that can be mowed and trimmed. However, maintenance activities outside of the perimeter have been conducted without the coordination with the forest manager, affecting the forest vegetation and *G. concolor* habitat (Hecsor Serrano-Delgado, DNER, pers. comm., 2013; O. Monsegur, UPRM, unpubl. report, 2006, p.1). In 2006, Omar Monsegur documented damages to an individual of *G. concolor* caused by vegetation removal activities outside of the fences (O. Monsegur, UPRM, unpubl. report, 2006, p. 1). Additionally, clearing the native vegetation along the access roads, around the telecommunication facilities, and under the power lines may facilitate and accelerate colonization of invasive vegetation in *G. concolor* habitat. See Factor E, below, for further discussion on invasive species.

Even though the population dynamics of the species are poorly known, we understand that the impacts discussed above could be detrimental to the species as a whole. Clearing of vegetation may result in direct impacts (cutting of individuals) or indirect impacts (by opening forest gaps that can serve as corridors for invasive species) to the species. Vegetation management and maintenance of communication towers and facilities are a threat to *Gonocalyx concolor* due to changes in microclimate (a local atmospheric zone where the climate differs from the surrounding area) and plant species composition. Also, vegetation management around the existing facilities and along the access roads may be a direct and indirect threat to the *G. concolor* because it may alter the habitat condition, allowing invasive plants to colonize the area, and may result in direct physical damage to the species.

The species' rarity and restricted distribution makes it vulnerable to habitat destruction and modification. The scope of these factors is exacerbated because the most significant portion of the known population occurs adjacent to telecommunication facilities and at the edge of the existing access road. The activities related to these facilities are expected to continue into the future. Therefore, they are likely to have significant impact on *Gonocalyx concolor.*

Varronia rupicola

The species' rarity and restricted distribution make it vulnerable to habitat destruction and modification. About 50 percent of known *Varronia rupicola* individuals in Puerto Rico occur on private lands (i.e., Yauco, Peñuelas, and Ponce) in areas subject to urban development. Moreover, the habitat at Peñuelas and Ponce may remain underestimated in relation to the presence of the species as the area has not been extensively explored. The habitat in the municipalities of Peñuelas and Ponce has been severely fragmented for urban development (i.e., housing projects, hotels, jails, landfills, rock quarries, and Puerto Rico Highway Number 2 (PR 2)). The habitat has been further fragmented by the use of these forested areas by PREPA as a right-of-way for power lines, and additional habitat was impacted for a former proposed gas pipeline (Gasoducto Sur). At least 1,200 ac (485 ha) of prime dry forest habitat from Guánica to Ponce are currently proposed for urban and industrial developments, which are evaluated by the Puerto Rico planning board (*http://www.jp.gobierno.pr*). These include the areas where the Ponce populations were located by Service staff. Future projects may threaten these populations with fragmentation, and possibly extirpate currently known individuals. Despite the species' biology suggesting its ability to colonize disturbed areas, it is very likely that once the habitat is fragmented, *V. rupicola* will be outcompeted by nonnative plant species (see Factor E discussion).

In Peñuelas, the species is found in an area that is currently under urban development. Breckon and Kolterman (1996) reported a healthy population of *Varronia rupicola* in this area located at El Peñón de Ponce (Municipality of Peñuelas), which is part of a residential development called "Urbanización El Peñón." At this site, *V. rupicola* plants grows within residential lots, and although the lots are large in size, current and ongoing construction and deforestation (some lots have been completely cleared for house construction) threaten this population. In 2007, Monsegur and Breckon (2007, p. 6) reported that one individual plant adjacent to "Urbanización El Peñon" was eliminated by the improvement of PR 2. The authors reported that vegetation was removed and the area was bulldozed, apparently as part of a project to control run-off from the ravine.

In Yauco, the species occurs within private properties that may be subject to urban development (*http://www.jp.gobierno.pr*). In fact, urban development has encroached remnants of native dry forest areas, resulting in the isolation or disjunction of populations of rare plants, hence, reducing suitable habitat for the species. These areas are also threatened by deforestation for agricultural practices such as raising cattle, cattle grazing, and for the extraction of fence posts (O. Monsegur, Service, pers. obs., 2005). The known population at Yauco was observed at the edge of an existing dirt road. Therefore, any road expansion may result in the extirpation of individuals, habitat modification, and intrusion of nonnative plants.

In the Guánica Commonwealth Forest and the Vieques Island National Wildlife Refuge (NWR), *Varronia rupicola* is found at the edge of trails and roads, making the species prone to be affected by management activities (e.g., widening of trails, road repairs). Additionally, several individuals of *V. rupicola* are found underneath power lines of PREPA at the Guánica Commonwealth Forest, where they are threatened by maintenance activities such as cutting or the use of herbicides. PREPA has the right to access the power lines for maintenance and service in case of emergencies. Damage to individual plants caused by maintenance activities has been observed in the past (O. Monsegur, Service, pers. obs., 2009). This makes a significant part of the Guánica populations prone to extirpation, despite the existence of regulatory mechanisms (see Factor D discussion, below).

Furthermore, despite being a National Wildlife Refuge, the Vieques site (Puerto Ferro) is considered as an active ammunition site due to the previous use of Vieques Island as a bombing range by the U.S. Navy (*http://www.navfac.navy.mil/products_and_services/ev/products_and_services/env_restoration/installation_map/navfac_*

atlantic/vieques.html). Although there are no current plans to conduct vegetation removal to investigate the ammunitions in Puerto Ferro (F. Lopez, Service, pers. comm., 2013), the investigation process at Vieques has proved to be dynamic and there is a possibility that clearing of native vegetation will be required to conduct removal of ammunitions in the future.

Varronia rupicola is also found in the western half of Anegada Island, and the population appears to be healthy. However, despite efforts to maintain biodiversity and promote conservation on Anegada, *V. rupicola*, along with other rare plant species and their preferred limestone habitat, faces threats of future habitat fragmentation, habitat modification, and invasive species (Pollard and Clubbe 2003, p. 5; McGowan *et al.*, 2006, p. 4). Anegada is under heavy pressure for residential and tourism development (McGowan *et al.*, 2006, p. 4), resulting in improvement and construction of roads, which increase habitat loss and fragmentation.

Degradation of habitat represents a threat to *Varronia rupicola*. About half of the known populations of *V. rupicola* and its suitable habitat are within privately owned land, which is being modified or is proposed to be modified for urban development. In addition, habitat fragmentation by clearing of vegetation, road construction, and right-of-way maintenance (cutting plants and use of herbicides) can limit the species' survivability where these activities create the conditions for nonnative plants to outcompete *V. rupicola*. We expect that this threat will continue and become more significant in the future.

Summary of Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Agave eggersiana is recognized as an ornamental plant, and is locally distributed by botanical gardens (St. George Village Botanical Garden) and the St. Croix Environmental Association to residents for use in private gardens. Most cultivated populations are groomed, and the residents do not allow natural recruitment. Therefore, we consider collection to be a threat to the species, due to the few remaining natural populations and the demand for these plants as ornamentals. Over-collection from natural populations may compromise the natural recruitment and the recovery of *Agave eggersiana*.

We do not believe that over-collection is a threat to *Gonocalyx concolor* or *Varronia rupicola*.

Summary of Factor C: Disease or Predation

The genus *Agave* is widely affected by the agave snout weevil (*Scyphophorus acupunctatus*). This weevil has a wide distribution that includes the Greater Antilles (i.e., Cuba, Jamaica, Hispaniola, and Puerto Rico) (Vaurie 1971, p. 4; Setliff and Anderson 2011, p. 1). The larvae of this weevil feed on the starchy base of the plant, increasing the risk of infestation by pathogens such as a virus or fungus, later resulting in the death of the plant (Vaurie 1971, p. 4). At this time, there is no information about the occurrence of the agave snout weevil within St. Croix. However, it has been documented to be found on adjacent islands such as St. Thomas and Water Island.

We do not have evidence of the agave snout weevil's presence on St. Croix, nor specifically on *Agave eggersiana*. However, given the abundance of potential weevil carrying vectors (such as nonnative agaves transplanted from other islands in local gardens), we consider that the weevil's arrival to this island to be likely. The agave snout weevil's presence on nearby islands is a concern, especially where there is constant traffic (commuting) among islands with local and international trade. This could potentially increase the risk of this weevil to arrive and infest the island at any time. Moreover, the island of St. Croix harbors other types of *Agave*, which could potentially become stepping stones for the weevil to spread and infest the few and limited populations of *A. eggersiana*.

Scar tissue has been observed on some individuals of *Agave eggersiana*, but there is no direct evidence that the severity of this stressor has affected the species as a whole. However, disease caused by the agave snout weevil could potentially affect *A. eggersiana* at a population level if it was located on St. Croix. Thus, based on our analysis of the best available scientific and commercial available data, we find that disease may become a significant threat to the overall status of *A. eggersiana* by affecting the long-term survival of the species.

We have no information indicating that disease or predation is a current threat to *Gonocalyx concolor* or *Varronia rupicola*.

Summary of Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Territory of the U.S. Virgin Islands currently considers *Agave eggersiana* as endangered under the Virgin Islands Indigenous and Endangered Species Act (Law No. 5665) (V.I. Code, Title 12, Chapter 2). This law, signed in 1990, amended an existing regulation (Bill No. 18–0403) to provide for the protection of endangered and threatened wildlife and plants by prohibiting the take, injury, or possession of indigenous plants. As we mentioned above, *A. eggersiana* is currently being used for private landscaping on St. Croix. At present, we do not have information about the sources of the individuals used for such purposes. However, we are concerned about the removal of individuals from natural populations for landscaping. Based on the number of individuals currently used for private gardens and the landscape practices in private areas, such as pruning and mowing of populations, we believe that protection provisions under local regulation may not be appropriately enforced. Rothenberger *et al.* (2008, p. 68) indicated that the lack of management and enforcement capacity continues to be a significant challenge for the USVI, because enforcement agencies are chronically understaffed, and territorial resource management offices experience significant staff turnover, particularly during administration changes.

One of the currently known populations of *Varronia rupicola* lies within the Vieques NWR (Puerto Ferro population). Collecting and managing plant material (including seeds) within a national wildlife refuge are regulated, and require a permit from the refuge manager (FWS Form 3–1383–R). The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997) provides guidance for management and public use of the refuge system.

In 1999, the Commonwealth of Puerto Rico approved Law No. 241, also known as New Wildlife Law of Puerto Rico ("Nueva Ley de Vida Silvestre de Puerto Rico"). The purpose of this law is to protect, conserve, and enhance both native and migratory wildlife species, including plants; declare all wildlife species within its jurisdiction as property of Puerto Rico; and regulate permits, hunting activities, and nonnative species, among others. However, as we mentioned above under the Factor A discussion, despite this protection some individuals of *Gonocalyx concolor* and *Varronia rupicola* have been pruned, and in some cases eliminated, as result of unauthorized activities, such as vegetation removal within the Commonwealth Forest (O. Monsegur, UPRM, unpubl. report, 2006, p. 1) and within privately owned lands

(Monsegur and Breckon 2007, p. 6). Therefore, we believe that protection provisions under Law No. 241 are not being adequately enforced.

In 1998, the Commonwealth of Puerto Rico approved Commonwealth Law No. 150, known as Puerto Rico Natural Heritage Law (Ley del Programa de Patrimonio Natural de Puerto Rico). The purpose of Law No. 150 is to create the DNER Natural Heritage Program. This program has the responsibility to identify and designate as critical elements some rare, endangered, or threatened species that should be considered for conservation, because of their contribution to biodiversity and because of their importance to the natural heritage (DNR 1988, p.1). Currently, *Gonocalyx concolor* and *Varronia rupicola* are considered as critical elements by the DNER Natural Heritage Program. Law No. 150 does not provide penalties for actions that may adversely affect critical elements; however, the law triggers other Commonwealth laws and regulations, such as Law No. 133 and Regulation No. 6769 (see below), that provide protection to critical elements.

The Carite and Guánica Commonwealth Forests are protected by Law No. 133 (12 L.P.R.A. sec. 191), 1975, as amended, known as the Puerto Rico Forest Law ("Ley de Bosques de Puerto Rico"), as amended in 2000. Section 8(A) of Law No. 133 prohibits cutting, killing, destroying, uprooting, extracting, or in any way damaging any tree or vegetation within a Commonwealth forest without authorization of the Secretary of the DNER. Although management plans for Commonwealth forests include the protection and conservation of species classified under DNER regulations as critical element, endangered, or threatened, on occasions the location of such species in the forests makes enforcement of these regulations a difficult task. As previously mentioned, *Gonocalyx concolor* and *Varronia rupicola* are located adjacent to trails, near access roads, and below power lines, where they are susceptible to maintenance practices. According to DNER forest managers, on several occasions, coordination between forest personnel and field staff from PREPA has not been effective to avoid damaging species protected by Commonwealth laws, including *V. rupicola* and *G. concolor* (M. Canals, DNER, pers. comm. 2008; H. Serrano-Delgado, DNER, pers. comm. 2013).

In 2004, the Commonwealth of Puerto Rico adopted Regulation No. 6769, Regulation of Special Permits for the Use of Communications and Buildings Associated to Electronic Systems of Communication within Commonwealth Forests in Puerto Rico ("Reglamento de Permisos Especiales para Uso de Comunicaciones y Edificaciones Asosiadas a Sistemas Electrónicos de comunicación en los Bosques Estatales"), which provides guidance for the installation and maintenance of telecommunication facilities within Commonwealth forests and for the protection of natural resources. Article 7(d) of this regulation states that during installation, operation, and maintenance of telecommunication facilities, conservation measures should be taken to avoid or minimize impacts on species protected by DNER and Federal agencies (DNER 2004a, p. 13). However, individuals of *Gonocalyx concolor* have been affected by maintenance activities of existing communication facilities, making implementation of this regulation a challenging task (see discussion under Factor A, above, and Factor E, below).

In 2004, DNER approved Regulation 6766 to regulate the management of endangered and threatened species in the Commonwealth of Puerto Rico ("Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico"). Article 2.06 of Regulation 6766 prohibits collecting, cutting, and removing, among other activities, listed plants within the jurisdiction of Puerto Rico. *Gonocalyx concolor* and *Varronia rupicola* are not included in the list of protected species under Regulation 6766. However, as indicated above, Law No. 241 provides protection to all wildlife species (including plants) under Commonwealth jurisdiction, even those on private lands.

On the island of Anegada, there are various conservation and education efforts taking place for the protection of rare plant and animal species (Wenger *et al.* 2010, p. 8). However, we are unaware of any formal regulatory mechanism for protecting *Varronia rupicola*. On November 3, 1999, a portion of western Anegada (2,646 ac (1,071 ha)) was designated as a Ramsar site and added to the List of Wetlands of International Importance (Western Salt Ponds of Anegada). A portion of the preferred limestone habitat of *V. rupicola* lies within this site, which is owned by the British government. Although this designation does not necessarily provide legal protection status, the purpose of Ramsar sites is to ensure the perpetuation of ecological functions of those sites by means of a wise-use approach.

In summary, *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* and their habitats are partially protected by Federal, Commonwealth, Territory, and local regulations. However, after evaluating the information available on the implementation of the existing laws, we determined those regulatory mechanisms do not provide adequate protection to the species. In particular, the enforcement of existing laws has not been effective, because harming or injuring (mowing or pruning) *Agave eggersiana* has been reported. In addition, the implementation and enforcement of measures to protect individuals of *V. rupicola* located adjacent to existing trails and below power lines within Commonwealth forests have not been effective. The same problem has occurred with *G. concolor* during maintenance of communication towers. Additionally, enforcement on private lands continues to be a challenge, as accidental damage or extirpation of individuals has occurred due to lack of knowledge of the species by private landowners.

Summary of Factor E: Other Natural or Manmade Factors Affecting Their Continued Existence

Invasive Species

Invasive plant species can affect native ecosystems at three levels: the genetic level, where the number of individuals of native species can be reduced below the minimum necessary for persistence; the species diversity level, where the number of species present and their distribution can be reduced; and the ecosystem level, where the functioning of the ecosystem can be changed (Rippey *et al.* 2002, p. 170). Nonnative species can be very aggressive and compete with native species for sunlight, nutrients, water, and ground cover. Once established, these nonnative species typically dominate the landscape, and the novel forest is characterized by a decrease in the number of endemics (Lugo and Helmer 2003, p. 145). The impacts of invasive species are among the greatest threat to the persistence of native rare species and their habitats (Thomson 2005, p. 615).

Although invasive plant species have not been documented as a current threat to *Varronia rupicola,* they may become so in the future. Studies conducted within the Guánica Commonwealth Forest indicate that some nonnative tree species (e.g., *Leucaena leucocephala*) can persist as a dominant canopy species for at least 80 years (Wolfe 2009, p. 2). The same is expected to occur

with nonnative grass species (e.g., *Megathyrsus maximus*). These invasive species may invade recently disturbed (naturally or by human impacts) areas and occupy the suitable habitat of *V. rupicola*. Despite the quality and overall diversity of the habitat that harbors *V. rupicola* populations in the southern coast of Puerto Rico, recent developments and habitat fragmentation have served as a corridor for invasive species (e.g., right-of-way for the former Gasoducto Sur; O. Monsegur, Service, pers. obs., 2013). On the island of Anegada, numerous invasive plants have been documented in the town of The Settlement, three of which have been observed moving towards natural habitats (McGowan *et al.* 2006, p. 4), further promoting the risk of wildfires that can affect *V. rupicola*.

With respect to *Agave eggersiana*, the populations at Protestant Cay, Gallows Bay, and Great Pond are surrounded by dense stands of different species of *Sansevieria*, an herb native to Africa. This invasive species seems to be occupying the ecological niche adjacent to known populations of *A. eggersiana* (O. Monsegur, Service, pers. obs., 2013). This invasive species can constrain the number of individuals of *A. eggersiana* and reduce the species' limited populations even more.

Invasive native plants, such as the ferns *Gleichenella pectinata* and *Sticherus bifidus*, may invade and alter diverse native communities, often resulting in plant monocultures that support few wildlife species (Walker *et al.* 2010, p. 627). These ferns can colonize disturbed areas faster than other native plants and may grow into dense mats, thereby excluding native plants (Walker *et al.* 2010, p. 634). Additionally, the mats formed by these species serve as fuel for fires and, in fact, seems to be fire-tolerant. The invasive, nonnative grass *Pennisetum purpureum* (elephant grass) is a fire-adapted species that, in dense growth, can suppress most grasses, herbs, and tree seedlings (J. K. Francis, ITF, internet data, 2013).

These invasive ferns and grass are currently found occupying areas disturbed by fire, landslides, and road construction in Cerro La Santa, and have the potential to affect *Gonocalyx concolor* by increasing fire incidences, microclimate, and nutrient cycling of the habitat on which this species depends. At present, we have no information about the competitive abilities of *G. concolor* in such a situation. Therefore, the effect of invasive species within the *G. concolor* habitat should be considered a threat to the species.

Human-Induced Fires

Fire is not a natural event in subtropical dry or moist forests in Puerto Rico and the U. S. Virgin Islands. The vegetation in the Caribbean is not adapted to fires, because this disturbance does not naturally occur on these islands (Brandeis and Woodall 2008, p. 557; Santiago-García *et al.* 2008, p. 604). Human-induced fires could modify the landscape by promoting nonnative trees and grasses, and by diminishing the seed bank of native species (Brandeis and Woodall 2008, p. 557). In some cases, fires may maintain extensive areas of young forest and grasslands, slowing the recovery of ecosysems and, therefore, impairing the delivery of ecosystem services (Brandeis and Woodall 2008, p. 557). For example, the nonnative *Megathyrsus maximus* is well adapted to fires and typically colonizes areas that were previously covered by native vegetation. Furthermore, the presence of this species increases the amount of fuel and the intensity of fires. Therefore, damage caused by fires to the ecosystems, particularly to juvenile plants, might be irreversible.

Human-induced fires may lead to destruction of the native vegetation seed bank and may create conditions favorable for the establishment of nonnative plant species adapted to fires (e.g., *Leucaena leucocephala* and *Megathyrsus maximus*) that may outcompete *Varronia rupicola* and *Agave eggersiana*. Furthermore, the presence of *M. maximus* and other grass species increases the amount of fuel and the intensity of fires that may affect endemic populations. Seedling mortality after fires is related to the differences on fuel loads and the different fire intensities (Santiago-García *et al.* 2008, p. 607). The *V. rupicola* populations that occur along the municipalities of Yauco, Peñuelas, and Ponce are susceptible to forest fires, particularly on private lands where fires are accidentally or deliberately ignited. Evidence of recent fires within the habitat and adjacent to known populations of *V. rupicola* in Peñuelas and Ponce have been observed by Service biologist Omar Monsegur (2011 and 2013). *Varronia rupicola* populations within the Guánica Commonwealth Forest may be protected, as this conservation area has an active fire control program (M. Canals, DNER, pers. comm. 2008). Nonetheless, Miguel Canals, Guánica Commonwealth Forest Manager, indicates that fires still occur in the forest, particularly on the periphery along roads (Canals, DNER, pers. comm. 2008). Moreover, accidental fires have been reported below the PREPA power lines adjacent to known populations of *V. rupicola*.

On the island of St. Croix, human-induced fires are also frequently reported, and most of them appear to have been originated close to existing roads (Chakroff 2010, p. 41). Estate Granard, Estate Jack's Bay, and Estate Isaacs Bay are among the areas identified as fire hotspots (Chakroff 2010, p. 42). One of the extant populations of *Agave eggersiana* is found on Estate Granard, and Jack's Bay and Isaacs Bay Estates are within the historical range for the species. In fact, from 2006 to 2009, there were between one and six fires in these estates (Chakroff 2010, p. 42). Human-induced fires particularly threaten the *A. eggersiana* population at Great Pond due to the abundance of nonnative grasses in this area. Service's personnel in St. Croix just documented a wildfire affecting the population of *Catesbaea melanocarpa* (Claudia Lombard, Service, pers. comm. 2013). This population is located less than 0.3 mi (0.5 km) from the *A. eggersiana* population at Manchenil Bay.

Human-induced fire is also a current threat to *Gonocalyx concolor* at Cerro La Santa. Areas adjacent to (less than 33 ft (10 m) from) a population of this species have been affected by such fires (O. Monsegur, UPRM, unpubl. data, 2006). Fire effects could accelerate the colonization of invasive plants and change the vegetation composition of Cerro La Santa (see discussion under Factor A, above). Currently, *Pennisetum purpureum*, a nonnative grass, is occupying these areas, making them vulnerable to human-induced fires. During the dry season (March through May), the fern *Gleichenella pectinata*, and other fern species that have colonized landslides and roadsides, form dense mats of dry material that serve as fuel for fires. Although Cerro La Santa is located in the wet forest, fires still occur in the area, particularly along roads, during the dry season (C. Pacheco, USFWS, pers. obs. 2013). Due to the small size of *G. concolor* populations and their proximity to areas susceptible to human-induced fires, the Service considers habitat modification by fires as a threat to the species.

Hurricanes and Climate Change

The islands of the Caribbean are frequently affected by hurricanes. The U.S. Virgin Islands have been hit by five major hurricanes in recent years: Hugo (1989), Luis and Marilyn (1995), Lenny (1999), and Omar (2008). Examples of the visible effects of hurricanes on the

ecosystem include massive defoliation, snapped and wind-thrown trees, large debris accumulations, landslides, debris flows, altered stream channels, and transformed beaches (Lugo 2008, p. 368). Successional responses to hurricanes can influence the structure and composition of plant communities in the Caribbean islands (Van Bloem *et al.* 2003, p. 137; Van Bloem *et al.* 2005, p. 572; Van Bloem *et al.* 2006, p. 517; Lugo 2000, p. 245). Hurricanes can produce sudden and massive tree mortality, which is variable among species (Lugo 2000, p. 245). As endemics to the Caribbean, *Varronia rupicola, Agave eggersiana,* and *Gonocalyx concolor* would be expected to be well adapted to tropical storms and the prevailing environmental conditions in this geographical area. However, the resilience of rare and endangered native species populations may be limited or constricted by the reduced number of populations and individuals, making the populations vulnerable to stochastic events.

The reduced number and small size of *Varronia rupicola* and *Agave eggersiana* populations in Puerto Rico and St. Croix, respectively, make these species susceptible to hurricanes impacts (e.g., extirpation). In the case of *A. eggersiana,* the impacts may be exacerbated by the reproductive biology of the species (i.e., the species depends on asexual reproduction, plants dying after flowering, and limited dispersal of bulbils). Therefore, impacts to a population may compromise its natural recruitment. In addition, for *V. rupicola,* a severe hurricane could result in extensive defoliation and could cause stem damage.

Populations of *Varronia rupicola* may be threatened by climate change, which is predicted to increase the frequency and strength of tropical storms and can cause severe droughts (Hopkinson *et al.* 2008, p. 260). Rather than assessing climate change as a single threat, we examined the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. In fact, vulnerability to climate change impacts is a function of sensitivity, exposure, and adaptive capacity of species (IPCC 2007, p. 89; Glick and Stein 2010, p. 19). For instance, severe droughts may compromise seedling recruitment, as they may result in deaths of small plants, or may compromise the viability of seeds. Despite the wide distribution of *V. rupicola* and the number of populations, the number of individuals per population may be too low to sustain a positive recruitment of individuals. This may explain the low number of intermediate-sized, nonreproductive individuals of *V. rupicola* observed in Guánica and Ponce, when compared to the high numbers of young seedlings (Omar A. Monsegur, Service, pers. obs. 2013).

On the island of Anegada, climate-induced sea-level rise could lead to the extirpation of *Varronia rupicola.* The preferred habitat of this species on that island is in lower elevations, and more than 40 percent of the island is less than 9.8 ft (3 m) above sea level (Wenger *et al.* 2010, p. 8). Similarly, *Agave eggersiana* occurs very close to beach areas in coastal areas. At least two *A. eggersiana* populations are located on a coastal cliff, susceptible to coastal erosion and landslides. Therefore, we believe that cyclonic surges and coastal erosion associated with hurricanes may significantly affect the populations located along the coastal areas of St. Croix (i.e., Manchenil Bay, South Shore, Cane Garden, Vagthus Point, and Protestant Cay), due to their proximity to cliffs and the shoreline.

The limited distribution and low number of populations (3) and individuals (172 historically reported) of *Gonocalyx concolor* may exacerbate its vulnerability to natural events such as hurricanes and landslides, and compromise its continued existence. Damage to higher elevation forested habitat is usually greater during hurricane events (Weaver 2008, p. 150). *Gonocalyx concolor* is extremely vulnerable due to its habitat requirements and the fact that it is usually found growing on the canopy of the tallest trees in Cerro La Santa and Charco Azul. The species is usually associated with old trees with abundant vines and epiphytes that provide horizontal structure for the colonization of the species (probably a habitat requirement for the germination of seeds). Hurricane winds often lead to tree defoliation, loss of small and large branches, and uprooting, resulting in damage to adjacent trees and understory vegetation. As a result, gaps are produced in the vegetation, causing temporary changes in the understory microclimate due to high light levels and temperature (Walker *et al.* 2010, p. 626). Therefore, damage to the forest canopy may result in a direct impact to individuals of *G. concolor* that may fall to the ground and probably be outcompeted by pioneer plant species that get established during early successional stages after hurricanes.

The recovery of elfin forest vegetation after hurricanes is usually slow, and the early regeneration process is dominated by a few species (Weaver 2008, p. 150). Furthermore, in the absence of knowledge of the reproductive capacity and ecological requirements of *Gonocalyx concolor,* it is difficult to predict its recovery after natural events such as hurricanes and tropical storms, particularly when the frequency and intensity of these weather events is expected to increase with climate change.

The habitat where *Gonocalyx concolor* occurs is susceptible to landslides during rain events mostly associated with tropical storms and hurricanes. Sometimes rainfall reaches 24 in (60 cm) in a single storm event, causing floods and interacting with topography and geologic substrate to induce mass wasting events (e.g., landslides; Lugo 2000, p. 246). In 1998, during Hurricane Georges, a landslide adversely affected approximately 2 ac (0.8 ha) of elfin forest at Cerro La Santa (Hecsor Serrano-Delgado, DNER, pers. comm. 2013). A massive landslide in the area where the species occurs would not only take out individuals of *G. concolor,* but would also modify the habitat necessary for the species and lead to conditions favoring the establishment of invasive and weedy vegetation that may permanently modify the habitat and outcompete *G. concolor* (see invasive species discussion under Factor E, above). As documented during Hurricane Georges, and based on the current conditions of the habitat at Cerro La Santa and Charco Azul, landslides are a current threat to this species. As with *Agave eggersiana* and *Varronia rupicola* (see discussion above), overall impact and the cumulative effects of climate change are also expected to have long-term adverse effects on *G. concolor. Gonocalyx concolor* is considered a species with very specific ecological requirements and that occupies biological islands (i.e., dwarf forests on high elevations of Puerto Rico). Thus, predicted changes on the structure of the vegetation due to climate change may result in the irreversible extirpation of the prime habitat for the species.

Low Reproductive Capacity, Highly Specialized Ecological Requirements, and Genetic Variation

Small and isolated populations of rare plants often display reduced fitness as reduced reproductive output, seedling performance, or pollen viability (Holmes *et al.* 2008, p. 1031). In the case

of *Gonocalyx concolor,* little is known about its reproductive capacity, recruitment, and genetic variation. The low number of individuals per population of a monoecious species (both sexes in the same flower), like *G. concolor,* suggests it has highly specialized ecological requirements, production of viable seeds rarely occurs, or there is a pollinator limitation. Despite the ongoing monitoring of the known population of *G. concolor,* no seedling recruitment has been observed in the wild. Knowing the phenology of a plant showing limited distribution is important in understanding the species' biology and ecology, such as the timing of flowering, fruiting, germination and subsequent growth, and accumulation of biomass in the field (Ruml and Vulic 2005, p. 218). Additionally, given the extremely limited geographic distribution of *G. concolor,* it is likely that its genetic variability is low.

In the case of *Agave eggersiana,* its reproductive biology is characterized by its dependence on asexual reproduction (i.e., bulbils). Current evidence suggests that the wild and cultivated populations of *A. eggersiana* have minimum genetic variation. This would result in the loss of alleles by random genetic drift, which would limit the species' ability to respond to changes in the environment (Honnay and Jacquemyn 2007, p. 824).

Cumulative Effects: Factors A through E

Agave eggersiana

The limited distributions and small population sizes of *Agave eggersiana* make this species very susceptible to further habitat loss (Factor A), diseases (Factor C), and competition with nonnative species (Factor E). Hurricanes, human-induced fires, and climate changes (Factor E) exacerbate current threats to the species. Furthermore, although the species is protected by territorial law, enforcement still is a challenge (Factor D), threatening the continued survival of the species. While these threats may act in isolation, it is very likely that two or more of these stressors (e.g., habitat loss and diseases) act simultaneously or in combination, resulting in cumulative impacts to populations of *A. eggersiana.*

Gonocalyx concolor

The rarity and specialized ecological requirements of *Gonocalyx concolor* (Factor E) make this species extremely vulnerable to habitat destruction or modification (Factor A), and to other natural or manmade factors, such as low reproductive capacity, possible low genetic variation, invasive species, hurricanes, landslides, human-induced fires, and climate change, particularly because it is confined to small geographical areas (Factor E). Furthermore, implementation and enforcement of effective measures to protect *G. concolor* have not prevented impacts to the species (Factor D). Although the above mentioned threats may act in isolation, it is very likely that two or more of these stressors act simultaneously or in combination (e.g., hurricanes and landslides; fires and invasion of nonnative plant species), resulting in cumulative impacts to populations of *G. concolor,* challenging its recovery.

Varronia rupicola

Varronia rupicola has a somewhat extended distribution in southern Puerto Rico. However, the species is represented by small and fragmented populations, and about half of them occur within private lands subject to urban development, making the species prone to destruction, modification, or curtailment of its habitat (Factor A). Moreover, other natural or manmade factors such as invasive species, human-induced fires, hurricanes, and climate change (Factor E) also pose threats to *V. rupicola.* Implementation and enforcement of regulatory mechanisms to protect the species have not been effective, particularly because enforcement on private lands continues to be a challenge (Factor D). Therefore, it is very likely that cumulative effects of these threats (e.g., poorly implemented regulatory mechanisms and habitat destruction) result in limitation, or even local extirpation, of *V. rupicola* populations.

Determinations

Determination for Agave eggersiana

Agave eggersiana is threatened by limited habitat and habitat loss (e.g., construction of roads, and residential and tourist developments and landscaping (Factor A)) and the potential for a disease to wipe out the limited populations (Factor C). In addition, agave is threatened by a high possibility of commercial collection for ornamental uses (Factor B), and competition with invasive, nonnative plants, as well as hurricanes and human-induced fires, which are further exacerbated by climate change (Factor E). Due to lack of enforcement, existing regulatory mechanisms are not adequately reducing these threats (Factor D). All of these threats currently occur rangewide and are likely to continue into the foreseeable future at a medium to high intensity.

Based on our evaluation of the best available scientific and commercial information on the species, the significant threats affecting *Agave eggersiana* and its habitat, as well as future potential threats, we have determined the species is currently in danger of extinction throughout all of its range, as a result of the severity and immediacy of threats currently impacting the species. The remaining habitat and populations are threatened by a variety of factors acting in combination to reduce the overall survivorship of *A. eggersiana.* The risk of extinction for *A. eggersiana* is high because the remaining populations are isolated and small. Therefore, we have determined that *A. eggersiana* meets the definition of an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for *A. eggersiana* because the species is very limited in numbers and in populations, and because threats are current and ongoing, occurring rangewide, and expected to increase and continue into the future.

As stated above, the threats to the survival of *A. eggersiana* occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Determination for Gonocalyx concolor

Gonocalyx concolor has a very limited distribution. According to our assessment, this species is threatened by habitat destruction or modification (Factor A) associated with maintenance and potential expansion of telecommunication facilities, and to other natural or manmade factors (i.e., low reproductive capacity, possible low genetic variation, invasive species, hurricanes, landslides, human-induced fires, and climate change (Factor E)). Due to ineffective implementation and enforcement, existing regulatory mechanisms are not adequately reducing these threats (Factor D). All of these threats currently occur rangewide and are likely to continue into the foreseeable future at a medium to high intensity.

Based on our evaluation of the best available scientific and commercial information on the species, the significant threats affecting *Gonocalyx concolor* and its habitat, as well as future potential threats, we have determined the species is currently in danger of extinction throughout all of its range, because of the severity and immediacy of threats currently

impacting the species. Overall, its habitat has been significantly reduced, and the remaining habitat and populations are threatened by a variety of factors acting in combination to reduce the overall viability of the species. The risk of extinction of *Gonocalyx concolor* is high because the remaining population is small, is isolated, and has limited potential to expand. As a result, we find that *G. concolor* meets the definition of an endangered species. We find that a threatened species status is not appropriate for *G. concolor* because the species is already very limited in numbers and distribution (i.e., it has a contracted range), and the threats are current and ongoing, occurring rangewide, and expected to continue into the future.

As stated above, the threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

As stated above, the threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Determination for Varronia rupicola

The rarity of *Varronia rupicola* and its restricted distribution renders it vulnerable to habitat destruction and modification. *Varronia rupicola* is threatened primarily by human-induced fires within its prime habitat. Habitat modification by urban development has promoted the invasion of its habitat by exotic grasses that are typically fire-adapted and, therefore, increase the chances of fires. Overall, nonnative plants and fires may result in extirpation of populations of *V. rupicola* by killing individuals, limiting natural recruitment, or permanently modifying habitat and conditions necessary for the species' establishment. Furthermore, due to the species' limited numbers and distribution, hurricanes may extirpate entire populations, and in the case of a highly fragmented habitat, hurricanes may further promote the invasion of forest gaps by nonnative plant species. Similarly, severe droughts resulting from climate change may compromise the survival of seedlings and diminish natural recruitment within wild populations.

The species has a wide distribution throughout the Puerto Rican bank (geographical unit that includes the main island of Puerto Rico, Vieques, Culebra, the USVI (excluding St. Croix) and the island of Anegada), has no germination problems, develops as reproductive individuals in a relatively short time period (1 to 2 years under nursery conditions), and is the subject of propagation and conservation protocols in development by the staff of the Royal Botanical Garden (KEW). Therefore, the Service considers that *V. rupicola* is a species with a high recovery potential that meets the definition of a threatened species. We find that an endangered species status is not appropriate for *V. rupicola* because the species is not currently in an imminent danger of extinction, but likely will be in the future as the scope and severity of threats become greater, placing the species in danger of extinction in the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we list *Varronia rupicola* as threatened in accordance with sections 3(20) and 4(a)(1) of the Act.

The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following the effective date of this final listing rule (see **DATES**), funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the Territory of the U.S. Virgin Islands and the Commonwealth of Puerto Rico would be eligible for Federal funds to implement management actions that promote the protection or recovery of *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola*. Information on our

grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* Additionally, we invite you to submit any new information on any of these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service (Salt River Bay National Historical Park and Ecological Preserve and Buck Island Reef National Monument); issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and maintenance of roads or highways by the Federal Highway Administration; and the issuance of permits for the installation of new telecommunication towers, expansion of existing ones, and their operation by the Federal Communication Commission.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61 for endangered plants and at 50 CFR 17.71 for threatened plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import, export, transport in interstate commerce in the course of commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. It is also unlawful to violate any regulation pertaining to plant species listed as endangered or threatened (section 9(a)(2)(E) of the Act).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plants species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered and threatened plants, a permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing and ongoing activities within the range of listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of *Agave eggersiana, Gonocalyx concolor,* or *Varronia rupicola,* including import or export across State lines and international boundaries without authorization.

(2) Removal, cutting, digging up, or damaging or destroying any of the species on any other area in knowing violation of any law or regulation of the Territory of U.S. Virgin Islands or the Commonwealth of Puerto Rico or in the course of any violation of the Territory of U.S. Virgin Islands or the Commonwealth of Puerto Rico criminal trespass law.

(3) Introduction of unauthorized nonnative species that compete with or prey upon *Agave eggersiana,* such as the introduction of the nonnative agave snout weevil to the island of St. Croix, USVI.

(4) The unauthorized release of biological control agents that attack any life stage of *Agave eggersiana, Gonocalyx concolor,* or *Varronia rupicola.*

(5) Modifying the habitat of *A. eggersiana, G. concolor* and *V. rupicola* on Federal lands without authorization or coverage under the Act for impacts to these species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.61 and 17.71) for endangered and threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a rule promulgated pursuant to section 4(d) of the Act (4(d) rule) has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 and 17.71 would not apply to that species, and instead, the 4(d) rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. With respect to a threatened plant, the Secretary of the Interior also has the discretion to prohibit by regulation any act prohibited by section 9(a)(2) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.71 and exceptions to those prohibitions in 50 CFR 17.72. We are not promulgating a 4(d) rule for *Varronia rupicola,* and as a result, all of the section 9(a)(2) general prohibitions, including the "take" prohibitions, will apply to *Varronia rupicola.*

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection

with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. No tribal lands occur in Puerto Rico or the United States Virgin Islands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0103 and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding entries for *"Agave eggersiana"*, *"Gonocalyx concolor"*, and *"Varronia rupicola"* in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Agave eggersiana	No common name ..	St. Croix, USVI	Agavaceae	E	848	17.96(a)	NA
*	*	*	*	*	*	*	
Gonocalyx concolor	No common name ..	Puerto Rico	Ericaceae	E	848	17.96(a)	NA
*	*	*	*	*	*	*	
Varronia rupicola	No common name ..	Puerto Rico	Boraginaceae	T	848	17.96(a)	NA
*	*	*	*	*	*	*	

* * * * *

Dated: August 26, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0040;4500030114]

RIN 1018–AZ79

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Agave eggersiana, Gonocalyx concolor, and Varronia rupicola

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for three Caribbean plants, *Agave eggersiana* (no common name), *Gonocalyx concolor* (no common name), and *Varronia rupicola* (no common name), under the Endangered Species Act of 1973, as amended (Act). In total, we are designating approximately 50.6 acres (20.5 hectares) of critical habitat for *A. eggersiana* in St. Croix, U.S. Virgin Islands (USVI), 198 ac (80.1 ha) for *G. concolor* in Puerto Rico, and 6,547 ac (2,648 ha) for *V. rupicola* in southern Puerto Rico and Vieques Island. The effect of this regulation is to conserve habitat for these plants under the Act.

DATES: This rule is effective October 9, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the Caribbean Ecological Services Field Office. Comments and materials we received, as well as some supporting

documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone (787) 851–7297; facsimile (787) 851–7440.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0040, and at the Caribbean Ecological Services Field Office or at *http://www.fws.gov/caribbean* (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, (see **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, when we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

This rule consists of: A final rule for designation of critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola*. We are designating:

- Approximately 50.6 acres (20.5 hectares) of critical habitat for *A. eggersiana* on six units in St. Croix, U.S. Virgin Islands (USVI).
- Approximately 198 ac (80.1 ha) for *G. concolor* on two units in Puerto Rico.
- Approximately 6,547 ac (2,648 ha) for *V. rupicola* on seven units in southern Puerto Rico and Vieques Island.

The final rule listing *Agave eggersiana* and *Gonocalyx concolor* as endangered species, and *Varronia rupicola* as a threatened species, is published elsewhere in today's **Federal Register**.

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 designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 21, 2014 (79 FR 29150), allowing the public to provide comments on our analysis. We have analyzed the comments. We have completed a final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from nine independent specialists to review our technical assumptions and analysis, and whether or not we used the best information, to ensure that this designation of critical habitat is based on scientifically sound data and analyses. We obtained opinions from one of those individuals. This peer reviewer generally concurred with our methods and conclusions. We also considered all comments and information we received from the public during the comment period.

Previous Federal Actions

Please refer to the proposed listing rule for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* published on October 22, 2013 (78 FR 62560) for a detailed description of previous Federal actions concerning these species.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* during two comment periods. The first comment period opened with the publication of the proposed rule (78 FR 62529) on October 22, 2013, and closed on December 23, 2013. We also requested comments on the proposed critical habitat designation and DEA during a comment period that opened May 21, 2014, and closed on June 20, 2014 (79 FR 29150). 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 draft economic analysis during these comment periods.

During the first comment period, we received two comment letters addressing the proposed critical habitat designation. During the second comment period, we did not receive any comment letters addressing the proposed critical habitat designation or the draft economic analysis. We did not receive any requests for a public hearing during either comment period. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from nine knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from one of the peer reviewers. Although the peer reviewer was supportive of the proposed critical habitat designation, he did not provide any additional information, clarifications, or suggestions to improve this final critical habitat rule.

Public Comments

During the public comment periods, we received one comment letter addressing the proposed critical habitat. The information in the letter was positive and in support of the proposed designation.

The commenter did state that critical habitat must buffer the species from climate change; the designation should not protect only occupied areas. We did not have specific information on potential climate-change-related, on-the-ground effects in these areas or on these plants, nor did we receive any information as a result of our request for such information in the proposed rule. However, based on the best available scientific and commercial information, we believe that the designation is sufficient to provide for the recovery of the species. In addition, according to our evaluation of the area, we included unoccupied areas for *Agave eggersiana* and *Varronia rupicola* that we determined to be essential for the conservation of the species (see *Criteria Used to Identify Critical Habitat*, below).

Summary of Changes From Proposed Rule

Information we received during the comment periods did not result in any substantive changes to this final rule.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act (16 U.S.C. 1531 et seq.) 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 (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific 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 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 insure 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 contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

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 *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* from studies of these species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 22, 2013 (78 FR 62529), and in the information presented below. Unfortunately, little is known of the specific habitat requirements for the three Caribbean plants. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the three species exist and the limited information available for these species. Additional information can be found in the final listing rule published in elsewhere in today's **Federal Register**. We have determined that the following physical or biological features are essential for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.*

Space for Individual and Population Growth and for Normal Behavior

Agave eggersiana

Agave eggersiana is endemic to the island of St. Croix, USVI. The species is found growing in the subtropical dry forest zone, which covers about 72 percent of the surface of St. Croix. The variables used to delineate any given life zone are defined by mean annual precipitation and mean annual bio-temperature (Ewel and Whitmore 1973, p. 2), and are characterized by an association of animals and plants (Mac *et al.* 1998, p. 317). Subtropical dry forests are lowland semi-deciduous and lowland drought deciduous forest. The vegetation in this life zone usually consists of a nearly continuous, single-layered canopy, with little ground cover. Tree heights usually do not exceed 49 feet (ft) (15 meters (m)), and crowns are typically broad, spreading, and flattened (Ewel and Whitmore 1973, p. 10).

Dry forest structure is greatly influenced by wind, salt spray, and the presence of fresh water. Some of the native tree species that are common in subtropical dry forest in the USVI are *Bursera simaruba* (L.) Sarg. (gumbo limbo), *Amyris elemifera* L. (torch wood), *Capparis cynophallophora* L. (Jamaican caper), *Cordia rickseckeri* Millsp. (black manjack), *Pisonia subcordata* Sw. (water mampoo), *Plumeria alba* L. (white frangipani), and *Pictetia aculeata* (Vahl) Urban (fustic) (Brandeis and Oswalt, 2007, p. 13; Ewel and Whitmore 1973, p. 16; Chakroff 2010, p. 8).

Plant communities where *Agave eggersiana* occurs are coastal cliffs with sparse or no vegetation and coastal shrubland areas. The plant community in these areas is predominately native vegetation and no competitive, nonnative, invasive plant species or such species in quantities low enough to have minimal effects on the survival of *A. eggersiana.* These communities and their associated native plant species are provided in the Status Assessment for *A. eggersiana* (see *Habitat* section of our proposed listing rule published on October 22, 2013 (78 FR 62560)).

Therefore, based on the above information, we identify the vegetation composition areas (e.g., dry coastal cliffs and dry shrubland) as an essential physical or biological feature for this species.

Gonocalyx concolor

Gonocalyx concolor is a Puerto Rican endemic plant species that has been found growing only in the elfin and ausubo (*Manilkara bidentata*) forests within the Carite Commonwealth Forest, which lies within the municipalities of Cayey, Patillas, and San Lorenzo in east-central Puerto Rico. Zonation of forests within montane habitats on tropical islands is condensed into a narrow altitudinal range (Weaver *et al.* 1986, p. 79). Both the elfin and ausubo forests are within the subtropical lower montane very wet forest life zone and have similar climate conditions (Ewel and Whitmore 1973, p. 32).

The elfin forest is found on exposed peaks and ridges of Cerro La Santa, above 2,900 ft (880 m) in elevation from sea level, occupying approximately 24.9 acres (ac) (10.1 hectares (ha)) in the Carite Commonwealth Forest (Silander *et al.* 1986, p. 178). The elfin forest vegetation is characterized by gnarled trees less than 7 meters tall, high basal area, small diameters, a large number of stems per unit area, and extremely slow growth rates (Ewel and Whitmore 1973, p. 45). The vegetation is commonly saturated with moisture, frequently enveloped in clouds, and both aerial and superficial roots are common (Weaver *et al.*1986, p. 79). The plant association in this area is generally comprised by few species of native trees and native ferns, and is dense with epiphytes, including bromeliads and mosses (Weaver *et al.* 1986, p. 79). The native tree composition includes: *Tabebuia schumanniana* (roble colorado), *Tabebuia rigida* (roble de sierra), *Ocotea spathulata* (nemoca cimarrona), *Eugenia borinquensis* (guayabota), *Clusia minor* (cupey de monte), and *Prestoea acuminata* var. *montana* (sierra palm) (Weaver *et al.* 1986, p. 80; Silander *et al.* 1986, p. 191). Additionally, some areas were planted with *Eucalyptus robusta* (O. Monsegur, UPRM, unpublished data, 2006).

The ausubo forest is only found along the Rio Grande de Patillas River basin and intermittent streams between 2,000 ft (620 m) and 2,300 ft (720 m) of elevation (DNR 1976, p. 169), occupying approximately 179.2 ac (72.5 ha) in the Charco Azul area within the Carite Commonwealth Forest (Silander *et al.* 1986, p.190). The ausubo forest is characterized by evergreen vegetation, high species richness, rapid growth rate of successional trees, epiphytic ferns, bromeliads, and orchids (Ewel and Whitmore 1973, p. 32). The vegetation in this area is generally comprised of native trees (i.e., *Manilkara bidentata* (ausubo), *Dacryodes excelsa* (tabonuco), *Guarea guidonia* (guaraguao), and *Cyrilla racemiflora* (swamp titi)) (Francis and Lowe 2000, p. 345; DNER 2008, p. 2).

Gonocalyx concolor has been found growing on the canopy of the tallest tree areas, growing on tree trunks (epiphytic), clambering (using other vegetation as support), and lying on the litter in the forest floor (C. Pacheco and O. Monsegur, Service, unpublished report, 2013, p. 3). The life history of this species has not been studied; however, it seems that the elfin and the ausubo forests provide space for individuals and population growth of *G. concolor.* Furthermore, the climate in these forests appears to support the normal behavior, growth, and viability of *G. concolor* during most of its life stages, suggesting the species may be a dwell obligate of these types of habitat, as it has not been found elsewhere. Changes in temperature, humidity, and solar insolation result in changes in habitat condition and vegetation composition, with serious effects on *G. concolor* (see the Summary of Factors Affecting the Species section of our final listing rule, which is published elsewhere in today's **Federal Register**).

Therefore, based on the above information, we identify the vegetation composition found in the elfin and the ausubo forests as an essential physical or biological feature for this species.

Varronia rupicola

Varronia rupicola is a Puerto Rican bank (biogeographical area) endemic that grows within the subtropical dry forest life zone overlying a limestone substrate (Ewel and Whitmore 1973, p. 72). The Puerto Rican bank is a geographical unit that includes the main island of Puerto Rico, Vieques, Culebra, the USVI (excluding St. Croix), and the Island of Anegada. In Puerto Rico, this life zone is mainly located on the south coast extending 74 miles (mi) (120 kilometers (km)) from the Municipality of Cabo Rojo to the Municipality of Guayama, and to the eastern of Puerto Rico, including the Island of Vieques (Ewel and Whitmore 1973, p. 72; Murphy and Lugo 1986, p. 89).

The species has been recorded in forested hills with open to relatively dense scrub and shrub lands 6.5 to 9.8 ft (2 to 3 m) in height; in low forest with canopy from 8 to 15 ft (3 to 5 m) high; and at the edge of a dense, low, coastal shrubland and forest. *Varronia rupicola* is associated with dry forest native vegetation dominated by *Gymnanthes lucida* (shiny oysterwood, or yaití), *Exostema caribaeum* (princewood, or albarillo), *Pisonia albida* (corcho), *Pictetia aculeata* (fustic, or tachuelo), *Thouinia portoricensis* (ceboruquillo, or serrazuela), *Coccoloba krugii* (whitewood), *Pilosocereus royenii* (Royen's tree cactus, or sebucán), *Bursera simaruba* (gumbo limbo, or almacigo), *Erithalis fruticosa* (black torch), *Guettarda krugii* (frogwood, or cucubano), *Tabebuia heterophylla* (pink trumpet tree, or roble), *Hypelate trifoliata* (inkwood), *Coccoloba diversifolia* (pigeonplum, or uvilla), *Cassine xylocarpa* (marbletree, or coscorrón), *Krugiodendron ferreum* (black ironwood, or palo de hierro), *Jacquinia berterii* (barkwood), *Bourreria succulenta* (strongbark, or palo de vaca), *Crossopetalum rhacoma* (maidenberry, or pico de paloma), *Antirhea acutata* (placa chiquitu, or quina), and *Amyris elemifera* (torchwood).

In the island of Anegada (British Virgin Islands), *Varronia rupicola* was found in open limestone pavement and sand dunes. During a recent study in this island, the species was found in higher abundance (based on percentage occurrence across plots) on limestone, but also widespread within the sand dunes (Clubbe *et al.* 2004, p. 344).

Therefore, based on the above information, we identify remnants of scrubland and shrubland forest that occurs within the subtropical dry forest life zone overlying limestone substrate as an essential physical or biological feature for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Agave eggersiana

The island of St. Croix, USVI, is located in the Caribbean, where the warm sea stabilizes air temperatures and diurnal temperature changes approximate annual fluctuations. The mean annual temperature of the region at sea level is lower than 75 degrees Fahrenheit (°F) (24 degrees Celsius (°C)). This subtropical climate results from the location of St. Croix at the lower limit of the tropical region (Ewel and Whitmore 1973 p. 8; Mac *et al.* 1998, p. 315).

The island of St. Croix has easterly trade winds of 15 miles per hour (24 kilometers per hour) or more, which keep the humidity relatively low (Chakroff 2010, p. 7). This island is much drier than most of the Greater Antilles, averaging 40 inches (in) (102 centimeters (cm)) of rain in the west, and about 30 in (76 cm) in the east. Rain usually comes in the form of brief tropical showers. The wettest and hottest months are July to October. Hurricane season falls within these same months, with September being the most active for tropical storms. The USVI have been hit by four major hurricanes in recent years: Hugo (1989), Luis and Marilyn (1995), Lenny (1999), and Omar (2008) (Mac *et al.* 1998, p. 316; Chakroff 2010, p. 7; *http://www.srh.noaa.gov/sju/?n=mean_annual_precipitation2*). The average mid-island temperature is 78.8 °F (26 °C), with a variation of only 5 to 9 °F (3 to 5 °C) between the warmest and coolest months (Mac *et al.* 1998, p. 316). This type of climate regime regulates the dry forest structure conditions necessary for the establishment of the species.

Soil substrates supporting *Agave eggersiana* for anchoring or nutrient absorption vary depending on the habitat and location. The natural populations of *A. eggersiana* grow on top of various soil classifications. Cramer, Glynn, Hasselberg, Southgate, and Victory series are among the ones where the species can be found. The general description of the soils mentioned above are provided in the Status Assessment for *A. eggersiana* (see *Habitat* section of our proposed listing rule published on October 22, 2013 (78 FR 62560)). The soils are all well-drained, and although there are rainy months, the ground does not retain excess water and change the vegetation of the dry forest structure.

Therefore, based on the information above, we identify the dry climate regime that regulates the dry forest structure and the well-drained soils of Cramer, Glynn, Hasselberg, Southgate, and Victory series to be physical or biological features for this species.

Gonocalyx concolor

The variables used to delineate any given life zone are mean annual precipitation and mean annual temperature. The life zones and associations of which they are comprised only define the potential vegetation or range of vegetation types that might be found in an area (Ewel and Whitmore 1973, p. 5). The mean annual precipitation at the Carite Commonwealth Forest is 88.7 in (225.3 cm), with February to April the drier months (NOAA 2013, *http://www.srh.noaa.gov/sju/?n=climo_cayey*). The mean temperature is 72.3 °F (22.7 °C), varying from 68 °F (20 °C) in January to 73 °F (24 °C) in July (Silander *et al.* 1986, p.183).

The Carite Commonwealth Forest is underlain by volcanic-sedimentary rock (DNR 1976, p. 168). The forest topography is rough and highly dissected by intermittent streams, with steep slopes ranging from 20 to 60 percent. The forest's soil is primarily comprised by Los Guineos complex (Silander *et al.* 1986, p. 179). Los Guineos soils were formed from residuum gathering from sandstone parental material and consist of very deep, acidic, clayey, well-drained soils on side slopes of mountains (NRCS 2013, p. 11). This type of soil occupies more than 80 percent (5,860.1 ac (2,371.5 ha)) of the Carite Commonwealth Forest, at elevations from 1,900 ft (580 m) to 3,000 ft (900 m) from sea level (Silander *et al.* 1986, p. 179).

Therefore, based on the information above, we identify mean annual precipitation of 88.7 in (225.3 cm), mean annual temperature of 72.3 °F (22.7 °C), and Los Guineos type of soil (i.e., very deep, acidic, clayey, well-drained soils on side slopes of mountains) to be physical or biological features for this species.

Varronia rupicola

Like *Agave eggersiana, Varronia rupicola* occurs within the subtropical dry forest life zone (*sensu* Holdridge 1967). Moisture availability as a function of shallow soils plus low rainfall and its seasonality determines the forest productivity, growth

characteristics, water loss, and physiognomy in subtropical dry forest life zones where temperature tends to be constant throughout the year (Lugo *et al.* 1978, p. 278). Average rainfall for the Guánica Forest (important area for the species in Puerto Rico) is 860 mm (Lugo *et al.* 1996, p. 2).

The majority of the suitable habitat and known populations of *Varronia rupicola* in Puerto Rico lie within the Ponce limestone formation, a Mid-Tertiary pink to white, fine-grain limestone (Lugo *et al.* 1996, p. 2). In Puerto Rico, this formation extends from the western end of the Guánica Commonwealth Forest, east toward the Municipality of Ponce (El Tuque). The soils at the Guánica Forest are described as shallow, alkaline, and derived from limestone rock (Molina and Lugo 2006, p. 355). According to Murphy and Lugo (1986, p. 56), these soils are nutrient-rich, but only a small fraction of the total phosphate and potassium is readily available. These soil factors increase the effects of low rainfall and its seasonality on the vegetation.

Therefore, based on the information above, we identify shallow and alkaline soils derived from limestone rock and an average rainfall of 34 in (86 cm) to be physical or biological features for this species.

Cover or Shelter

Agave eggersiana

Agave eggersiana occurs in open canopy and open understory habitats and thrives in areas of full sun exposure (O. Monsegur and M. Vargas, Service, pers. obs. 2010 and 2013). The coastal shrublands typically show a low canopy, ranging from 3.2 to 16.4 ft (1 to 5 m) (Moser *et al.* 2010, Appendix A, p. 8–11; O. Monsegur and M. Vargas, Service, pers. obs. 2013). In areas where native species remains dominant and nonnatives have not occupied the understory, these coastal shrublands provide suitable habitat for the natural recruitment of *A. eggersiana.* In addition, the bare rock of coastal cliffs seems to provide an ecological niche for *A. eggersiana.* Once the species gets established on cliff areas, it may become dominant as observed on the South Shore (Cane Garden) population. Therefore, based on the information above, we identify open cover habitats (e.g., open canopy or open understory) to be a physical or biological feature for this species.

Gonocalyx concolor

Very little is known about habitat parameters specifically relating to cover or shelter for *Gonocalyx concolor.* In remnants and late successional vegetation of elfin forest, the species is normally found growing as epiphytic and clambering on dead and live stand trees, and crawling over the forest floor (C. Pacheco and O. Monsegur, Service, unpublished data, 2013). In the ausubo forest, this species has been described growing only as epiphytic and clambering on dead and live stand trees (O. Monsegur, unpublished data, 2006). Both types of forest show a single canopy layer that seldom exceeds 22 ft (7 m) in height. Therefore, based on the information above, we identify the remnants and late successional vegetation of elfin and ausubo forests with a single canopy layer of about 22 ft (7 m) in height to be physical or biological features for this species.

Varronia rupicola

This species has been recorded in forested hills with open to relatively dense shrublands ranging between 6.5 to 9.8 ft (2 to 3 m) in height; in low forest with canopy from 8 to 15 ft (3 to 5 m) high; and at the edge of a dense, low, coastal shrubland and forest. On the island of Anegada, the species is located on open limestone pavement and sand dunes. Despite the species' preference for gaps, it remains associated to remnants of native forest.

In a recent study at Anegada, *Varronia rupicola* was found in higher abundance (based on percentage occurrence across plots) on limestone, but also widespread within the sand dunes (Clubbe *et al.* 2004, p. 344). This kind of forest structure provides protection against environmental variation and stochastic events, allowing the species to recover without compromising population numbers. The species is associated to remnants of native dry forest vegetation. At the Guánica Commonwealth Forest, the most abundant species are *Gymnanthes lucida, Exostema caribaeum, Pisonia albida, Pictetia aculeata, Thouinia portoricensis, Coccoloba krugii,* and *Pilosocereus royenii* (Murphy and Lugo 1986, p. 91). These species account for 50 percent of the importance value (abundance) within the forest and characterize the Deciduous Forest and Scrub Forest vegetation described by Murphy *et al.* (1995, p. 187). Other dominant species within the *V. rupicola* habitat include *Bursera simaruba, Erithalis fruticosa, Guettarda krugii, Tabebuia heterophylla, Hypelate trifoliata, Coccoloba diversifolia, Cassine xylocarpa, Krugiodendron ferreum, Jacquinia berterii, Bourreria succulenta, Crossopetalum rhacoma, Antirhea acutata,* and *Amyris elemifera* (Murphy and Lugo 1986, p. 91). The species is also associated with a shrub layer dominated by *Croton humilis, Eupatorium sinuatum, Lantana reticulata,* and *Turnera diffusa.*

Therefore, based on the information above, we identify forested hills with open to relatively dense shrubland forest dominated by native species to be physical or biological features for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Agave eggersiana

Agave eggersiana dies after producing flowers (monocarpic life cycle) and produces a large flowering scape (massive inflorescence; a group or cluster of flowers arranged on a stem that is composed of a main branch or a complicated arrangement of branches) (Rogers 2000, p. 218). After flowering, the panicles (inflorescence) produce numerous small vegetative bulbs (bulbils) (Proctor and Acevedo-Rodríguez 2005, p. 118). The small vegetative bulbils will fall near the parental agave and attach to the ground on the coastal cliffs and dry coastal shrubland. Coastal cliffs, which include bare rock or sparse native vegetation, create an environment where the canopy is less than 1 meter in height, and allow the bulbils to compete for ground area. The dry coastal shrubland includes dry forest structures where the open canopy and open understory habitat also allows the bulbils to compete for ground area. These open canopy or open understory structures allow *A. eggersiana* good sun exposure where the species seems to thrive (for further discussion of these communities and their associated native plant species, see the Status Assessment for *A. eggersiana* in the *Habitat* section of our proposed listing rule, published on October 22, 2013 (78 FR 62560)). Therefore, based on the information above, we identify the vegetation communities in the coastal cliffs and dry coastal shrublands where *A. eggersiana* occurs to be a physical or biological feature for this species.

Gonocalyx concolor

The reproductive biology and ecology of *Gonocalyx concolor* have not been studied. We have no information available beyond the habitat where the species is found and its behavior in that habitat. However, as indicated above, it seems that the conditions of the elfin and ausubo forests support the normal behavior, growth, and viability of *G. concolor* during most of its life stages. Therefore, based on the information above, we identify the elfin and ausubo

forests to be physical or biological features for this species.

Varronia rupicola

Varronia rupicola has been reported flowering and fruiting in December to January (Breckon and Kolterman 1996, p. 4), and in June-July (Monsegur and Breckon 2007, p. 1). Fruit production in the wild at the Guánica Commonwealth Forest and in the Municipality of Ponce seem to be high, and there is evidence of recruitment associated to the majority of the clusters of individuals (Monsegur, USFWS, pers. obs. 2013). Under greenhouse conditions, seed germination has been reported at no less than 67 percent (Wenger *et al.* 2010, p. 23). Germination in the wild has also been observed to be high, particularly on shrubs growing exposed to sunlight. However, there seems to be a high mortality (natural thinning) of seedlings, and only a few individuals make the transition to sapling stages (O. Monsegur, Service, pers. obs. 2013). Furthermore, despite the showy red fruits of *V. rupicola,* its dispersion seems to be limited by gravity, as the majority of the seedlings lie under the parent tree or downslope. The wide range of the species suggests a former animal disperser, probably a bird.

Material germinated in the Service greenhouse at Cabo Rojo National Wildlife Refuge flowered and produced fruits about 1 year after planted (O. Monsegur, Service, pers. obs. 2013). The rapid development of the species as reproductive individuals, and the finding of individuals along recently disturbed sites (i.e., new dirt roads) and natural forest gaps, may indicate that *Varronia rupicola* is an early colonizer (pioneer) species of dry coastal forest. The above information highlights the importance of open to relatively low dense shrubland forest (scrub forest and deciduous forest or shrubland) dominated by native species for the self-recruitment of the species and sustainability of the natural populations. As previously mentioned, moisture availability as a function of shallow soils, plus low rainfall and its seasonality, are the factors suggested as determining forest productivity, growth characteristics, water loss, and physiognomy. The diversity within the dry coastal native forest of Puerto Rico is explained by the wide diversity of habitats produced by the proximity of the limestone basement to the surface and the subsequent variation in soil depth. These unique native forests provide the adequate and stable environmental conditions for the reproduction and natural recruitment of the species.

Therefore, based on the information above, we identify open to relatively dense shrubland forest (scrub forest and deciduous forest or shrubland) dominated by native species to be a physical or biological feature for this species.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Agave eggersiana

There are reports from Britton and Wilson (1923, p. 156) that *Agave eggersiana* occurred in the eastern dry areas in St. Croix. This area harbors dry forest conditions and native vegetation that provide suitable habitat for *A. eggersiana*. Most of that eastern end is currently owned and managed for conservation by the USVI Government and The Nature Conservancy. The upper slopes and steep areas of eastern St. Croix provide essential dry forest habitat conditions for the reintroduction and the recovery of the species. These forest harbors xeric native vegetation and forest structure that provides shelter, space for growing and breeding, and food and water resources necessary for the species. However, we do not have current evidence that *A. eggersiana* occurs in this area.

Since 2007, *Agave eggersiana* has been introduced within U.S. National Park Service (NPS) properties (i.e., Salt River National Park and Ecological Preserve, and Buck Island Reef Monument) that are outside the known historical range of the species. In addition, there is an intra-agency agreement under the Service's Coastal Program to restore habitat in the area and plant native flora in Salt River National Park and Ecological Preserve. *A. eggerisana* is one of the plants used as part of the native plant restoration agreement.

Therefore, based on the information above, we identify the dry forest conditions in the eastern side of St. Croix to be part of the physical or biological features for this species.

Gonocalyx concolor

The elfin and the ausubo forest where *Gonocalyx concolor* currently exists are owned by the Commonwealth of Puerto Rico. This land has been managed for conservation by the Puerto Rico Department of Natural and Environmental Resources (DNER) since 1975 (back then, Department of Natural Resources; DNR 1976, p. 169). Before 1975, the elfin forest area in Cerro La Santa (Carite Commonwealth Forest) was managed by the Commonwealth of Puerto Rico as a preferred site for the installation of telecommunication tower facilities for television and radio, and for military and governmental purposes. These types of activities may have caused disturbance to the habitat of *G. concolor,* because Cerro La Santa is one of the two known locations of the species. Although the Carite Commonwealth Forest is under local government protection, the area of Cerro La Santa is still vulnerable to habitat modification resulting from maintenance and potential expansion of existing telecommunication facilities. Therefore, based on the information above, we identify the elfin and ausubo forests found within the Carite Commonwealth Forest to be physical or biological features for this species.

Varronia rupicola

The species has been historically recorded from the geographical area comprising the Guánica Commonwealth Forest in southwestern Puerto Rico, and the area of the Vieques National Wildlife Refuge (NWR) in the island of Vieques, eastern Puerto Rico. The Guánica Forest was designated as a Commonwealth forest in 1917, by Governor Arthur Yager, and has been protected and managed since 1930 (Lugo *et al.* 1996, p. 2; Murphy and Lugo 1990, p. 15). It is now the largest Commonwealth-protected area over limestone substrate in Puerto Rico, with an estimated area of about 10,872 ac (4,400 ha) (Miguel Canals, DNER, pers. comm. 2009). The Guánica Commonwealth Forest is divided in two main contiguous areas: the east section, which includes the original forest area; and the west section, added after 1950 (Lugo *et al.* 1996, p. 2). This forest is considered one of the best examples of a subtropical dry forest in the world (Murphy and Lugo 1990, p. 15; Ewel and Whitmore 1973, p. 72). The Guánica Commonwealth Forest harbors remnants of native dry forest vegetation over limestone pavement, some of these considered as pristine forest. Since the forest has been protected and managed for over 90 years, native vegetation has recovered from previous deforestation for charcoal production. As a result of this, the forest harbors populations of several of the rarest plants endemic to the dry forest of Puerto Rico, and the presence of stands of invasive nonnatives remains associated to areas previously inhabited and along roads within the forest. However, it is important to notice that *Varronia rupicola* also occurs within privately owned lands outside the Guánica Commonwealth Forest, which makes it vulnerable to habitat destruction.

On Vieques Island, about 54 percent of the land is a National Wildlife Refuge managed by the Service (Vieques NWR CCP & EIS 2007, p. 2). Some areas within the refuge harbor suitable habitat for *Varronia rupicola*, providing protection to the species' habitat and probably to undetected populations (Vieques NWR CCP & EIS 2007, p. 2). However, only three patches of dry forest vegetation over limestone substrate that harbor *V. rupicola* populations have been currently identified in the island of Vieques and only two are located within the Vieques NWR. The remaining third patch belongs to the Commonwealth of Puerto Rico. These three natural areas are adjacent and represent the remnant of the prime habitat for the species in Vieques.

Therefore, based on the information above, we identify remnants of scrubland and shrubland forest that occurs within the subtropical dry forest life zone overlying limestone substrate to be physical or biological features for this species.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of *A. eggersiana, G. concolor,* and *V. rupicola* in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements (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.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to these three Caribbean plants are:

Agave eggersiana

(1) Areas consisting of coastal cliffs and dry coastal shrublands.

(a) Coastal cliff habitat includes:

(i) Bare rock; and

(ii) Sparse vegetation.

(b) Dry coastal shrubland habitat includes:

(i) Dry forest structure; and

(ii) A plant community of predominately native vegetation.

(2) Well-drained soils from the series Cramer, Glynn, Hasselberg, Southgate, and Victory.

(3) Habitat of sufficient area to sustain viable populations in the coastal cliffs and dry coastal shrublands listed in PCEs (1) and (2), above.

Gonocalyx concolor

(1) Elfin forest at elevations over 2,900 ft (880 m) in Cerro La Santa, Puerto Rico, which includes:

(a) Forest with single canopy layer with trees seldom exceeding 22 ft (7 m) in height.

(b) Associated native vegetation dominated by species such as *Tabebuia schumanniana, Tabebuia rigida, Ocotea spathulata, Eugenia borinquensis, Clusia minor,* and *Prestoea acuminata* var. *montana,* native ferns, and dense cover with epiphytes, including bromeliads and mosses.

(2) Ausubo forest at elevations between 2,000 to 2,300 ft (620 to 720 m) in the Charco Azul, which includes:

(a) Forest with single canopy layer with trees exceeding 22 ft (7 m) in height.

(b) Plant association comprised by few species of native trees and associated native vegetation (e.g., *Manilkara bidentata, Dacryodes excelsa, Guarea guidonia,* and *Cyrilla racemiflora*), native ferns, and dense cover with epiphytes, including bromeliads and mosses.

(3) The type locations described in PCEs (1) and (2), above, for this species should have mean annual precipitation of 88.7 in (225.3 cm), mean annual temperature of 72.3 °F (22.7 °C), and Los Guineos type of soil (i.e., very deep, acidic, clayey, well-drained soils on side slopes of mountains).

Varronia rupicola

(1) Remnants of native shrubland and scrubland forest on limestone substrate within the subtropical dry forest life zone. Dry shrubland and scrubland forest includes:

(a) Shrubland vegetation with canopy from 6.5 to 9.8 ft (2 to 3 m) high;

(b) Limestone pavement;

(c) Associated native vegetation; and

(d) A shrub layer dominated by *Croton humilis, Eupatorium sinuatum, Lantana reticulata,* and *Turnera diffusa.*

(2) Semi-deciduous dry forest on limestone substrate within the subtropical dry forest life zone. Dry limestone semi-deciduous forest includes:

(a) Low forest with canopy from 8 to 15 ft (3 to 5 m) high;

(b) Limestone pavement;

(c) Associated dry forest native vegetation; and

(d) A shrub layer dominated by *Croton humilis, Eupatorium sinuatum, Lantana reticulata,* and *Turnera diffusa.*

(3) The type locations described in PCEs (1) and (2), above, for this species should have shallow and alkaline soils derived from limestone rock and an average rainfall of 34 in (86 cm).

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 that are essential to the conservation of the species and which may require special management considerations or protection.

Agave eggersiana and Varronia rupicola

The primary threats to the physical or biological features (PBFs) that *Agave eggersiana* and *Varronia rupicola* depend on include: (1) Habitat destruction and modification by development; (2) competition with nonnative plant species; (3) human-induced fire; and (4) hurricanes and storm surge. The majority of these threats can be addressed by special management considerations or protection, while others (e.g., hurricanes and storm surges) are beyond the control of land owners and managers. Management activities that could ameliorate these threats include, but are not limited to, establishment of permanent conservation easements or land acquisition to protect the species and its habitat on private lands; establishment of conservation agreements on private, nongovernment, and government lands to protect the habitat; implementation of control of invasive, nonnative plant species to reduce competition and prevent habitat degradation; implementation of management practices to control fires; and creation or revision of management plans for the identification of the areas where current developments exist and to better guide the implementation of conservation measures for the species. For *A. eggersiana,* precautions are needed to avoid inadvertent mowing and cutting of the species in the course of landscaping activities. In addition, for both *A. eggersiana* and *V. rupicola,* development of residential and tourism projects should avoid impacting these habitats directly or indirectly, and habitat fragmentation should be limited as much as possible to maintain connectivity between populations and to avoid habitat degradation due to the colonization by nonnative, invasive plants.

Gonocalyx concolor

The primary threats to the PBFs that *G. concolor* depends on include: (1) Habitat destruction and modification by development of telecommunication

towers and associated facilities on the mountain top of Cerro La Santa; (2) vegetation management; (3) hurricanes and tropical storms; (4) landslides; (5) invasive species; and (6) human-induced fire. The majority of these threats can be addressed by special management considerations or protection while others (e.g., hurricanes, landslides, and climate change) are beyond the control of land owners and managers. Management activities that could ameliorate these threats include, but are not limited to, implementation of conservation measures with DNER to reduce threats to the species in the Carite Commonwealth Forest; minimization of habitat disturbance, fragmentation, and destruction resulting from maintenance of telecommunication facilities; prevention of fires; and controlling invasive plant species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species we then consider, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), whether designating additional areas outside those currently occupied is essential for the conservation of the species. As discussed in further detail below, we are designating critical habitat in areas within the geographical area occupied by the three Caribbean plant species at the time of listing. We also are designating specific areas outside the geographical area occupied by *A. eggersiana* and *V. rupicola* that were historically occupied, but are presently unoccupied at the time of listing, because we have determined that such areas are essential for the conservation of the species. For *G.concolor,* we are not designating any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

Sites were considered occupied if the species was documented by reports and if biologists observed them on site visits to the areas. We also reviewed available information that pertains to habitat requirements for the three Caribbean plants. Sources of data for the three Caribbean species and their habitat included multiple databases maintained by universities and by State and Federal agencies from Puerto Rico and USVI, reports on assessments and surveys throughout the species' range, and assessments of current conditions of the three Caribbean species and their habitat at known locations (e.g., Monsegur and Vargas, Service, pers. obs. 2013; Dalmida-Smith, DPNR 2010; Moser *et al.* 2010). We reviewed the best available information pertaining to the habitat requirements of the species. Specifically, the sources of information included, but were not limited to:

(1) Data used to prepare the listing package;

(2) Observations gathered on field visits by various agencies (Service, DPNR, and DNER);

(3) Peer-reviewed articles and various agency reports;

(4) Information from species experts; and

(5) Regional Geographic Information System (GIS) data (such as species occurrence data, topography, aerial imagery, and land ownership maps) for area calculations and mapping.

Areas for critical habitat designation were selected based on the limited information we have gathered on the species and the quality of the element occurrence(s), condition of the habitat, and distribution within the species' range. Typically, selected areas contain natural habitat that contain native flora as observed in field visits. However, some lower quality occurrences, with restoration potential, were included to ensure that critical habitat is being designated across the species' range and to avoid a potential reduction of the distribution of the three Caribbean plants. The habitats upon which the species depends is often easily viewed using aerial photography. Additionally, aerial photography provided an overview of the land use surrounding the areas where the species are located. Topographic maps and elevation data provided contours and drainage patterns that were used to help identify potential areas for growth and expansion of the species. A combination of these tools, in a GIS interface, allowed for the determination of the critical habitat boundaries.

We plotted all occurrence records of the three Caribbean plants on maps in geographic information system as points and polygons. Then, we used U.S. Geological Survey (USGS) topographic maps, aerial photographs, and U.S. Forest Service (USFS)-International Institute of Tropical Forestry (IITF) land cover layers to delineate the critical habitat units. Critical habitat units were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a Geographic Information Systems (GIS) program.

We are also designating specific areas outside the geographical area occupied by *Agave eggersiana* at the time of listing (areas reported as historical) and *Varronia rupicola,* because the current amount of habitat that is occupied is not sufficient for the recovery of the species. Specifically, we analyzed and selected areas that contained the PCEs, the PBF necessary for the establishment of the species, and natural areas of pristine or remnants of pristine habitat (habitat with native vegetation and no or few exotics species) that could be used to introduced individuals with a high expectancy of survivorship and recovery. These unoccupied areas would safeguard other established populations in case of any stochastic event that occurs within habitats currently occupied by the species. In the case of *Agave eggersiana,* we also took under consideration historical areas, and for *Varronia rupicola,* we considered the area as a single ecological unit where ecological interactions and genetic flow is expected to occur between the unoccupied and occupied areas. Small populations and plant species with limited distributions, like those of *Agave eggersiana* and *Gonocalyx concolor,* are vulnerable to relatively minor environmental disturbances (Frankham 2005, pp. 135–136), and are subject to the loss of genetic diversity from genetic drift (Ellstrand and Elam 1993, pp. 217–237; Leimu *et al.* 2006, pp. 942–952; Honnay and Jacquemyn, 2007, p. 824). Plant populations with lowered genetic diversity are more prone to local extinction (Barrett and Kohn 1991, pp. 4, 28). Smaller plant populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360; Palstra and Ruzzante 2008, pp. 3428–3447). Because of the dangers associated with small populations or limited distributions, the recovery of many rare plant species includes the creation of new sites or reintroductions to ameliorate these effects. When designating critical habitat, we consider future recovery efforts and conservation of the species.

The habitat of these species must be conserved to fulfill their recovery. Furthermore, it is important to ensure there are enough individuals of the

species to secure their survival into the future as well as to ensure the habitat (with all associated plant communities) is adequate for the species. At present, there are only approximately 300 known adult individuals of *Agave eggersiana,* 31 individuals of *Gonocalyx concolor,* 75 individuals of *Varronia rupicola,* and only few areas where the three species have been documented. Although at this moment we do not know how many individuals would suffice to safeguard these species, having limited populations in limited areas is detrimental to the species, and even more detrimental if threats are not ameliorated.

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 for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* 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 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 Regulation Promulgation section. 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–R4–ES–2013–0040, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Final Critical Habitat Designation

We are designating six units as critical habitat for *Agave eggersiana,* two units for *Gonocalyx concolor,* and seven units for *Varronia rupicola* as critical habitat. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. The units are: (1) Cane Garden, (2) Manchenil, (3) Great Pond, (4) Protestant Cay, (5) East End South, and (6) East End North for *Agave eggersiana;* (1) Cerro La Santa and (2) Charco Azul for *Gonocalyx concolor;* (1) Montalva, (2) Guánica Commonwealth Forest, (3) Montes de Barina, (4) Peñón de Ponce, (5) Punta Negra, (6) Puerto Ferro, and (7) Cerro Playuela for *Varronia rupicola.* Tables 1, 2, and 3 shows the critical habitat units for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola,* respectively.

Agave eggersiana

TABLE 1—OCCUPANCY OF AGAVE EGGERSIANA BY DESIGNATED CRITICAL HABITAT UNITS

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Occupied at time of listing	Land ownership	Size of unit in acres (hectares)
Agave eggersiana			
1. Cane Garden	Yes	Private	6.9 (2.8)
2. Manchenil	Yes	Private	1.5 (0.61)
3. Great Pond	Yes	Territory	0.8 (0.32)
4. Protestant Cay	Yes	Territory, but leased to private	0.4 (0.16)
5. East End South	No	Private	19 (7.7)
6. East End North	No	Territory	22 (8.9)
Total			50.6 (20.5)

Note: Area sizes may not sum due to rounding.

Unit 1: Cane Garden

Unit 1 consists of 6.9 ac (2.8 ha) of privately owned lands located at Estate Cane Garden and Estate Peters Mindle, Christiansted, St. Croix, USVI. This unit is located in the south-central portion of the island, approximately 0.17 mi (0.27 km) south of Road 62 and approximately 0.2 mi (0.3 km) northeast of Vagthus Point, along the northeast coast of Canegarden Bay and south of a private trail. It is within the geographical area occupied at the time of listing. This unit contains all the PCEs. The PCEs in this unit may require special considerations to address threats of nonnative plant species, effects of hurricanes (i.e., storm surge and erosion), and habitat modification (e.g., trails expansion).

Unit 2: Manchenil

Unit 2 consists of 1.5 ac (0.61 ha) of privately owned lands located at Estate Granard, Christiansted, St. Croix, USVI. This unit is located in the south-central portion of the island, approximately 0.50 mi (0.82 km) south of Road 62 and approximately 0.02 mi (0.03 km) east of South Shore Road, along the northeast coast of Manchenil Bay. It is within the geographical area occupied at the time of listing. This unit contains all the PCEs. The PCEs in this unit may require special considerations to address threats of fires, nonnative plant species, effects of hurricanes (i.e., storm surge), and habitat modification.

Unit 3: Great Pond

Unit 3 consists of 0.8 ac (0.32 ha) of territory-owned land located at Estate Great Pond, Christiansted, St. Croix, USVI. This unit is located in the south of the island, approximately 6.5 ft (2 m) south of Road 62 and east of the entrance of East End Marine Park offices. It is within the geographical area occupied at the time of listing. This unit contains all the PCEs. The PCEs in this unit may require special considerations to address threats of fire, nonnative plant species, and habitat modification (i.e., landscaping).

Unit 4: Protestant Cay

Unit 4 consists of 0.4 ac (0.16 ha) of territory-owned lands that are leased to a private party and are located at Protestant Cay, St. Croix, USVI. The Cay is located approximately 0.33 km (0.20 mi) north of Christiansted town. The unit is located on the northeast side of

the Cay. It is within the geographical area occupied at the time of listing. This unit contains all the PCEs. The PCEs in this unit may require special considerations to address threats of nonnative plant species, effects of hurricanes (i.e., storm surge and erosion), and habitat modification (i.e., hotel landscaping and maintenance).

The Protestant Cay unit is also currently designated as critical habitat for the St. Croix ground lizard (*Ameiva polops*) (42 FR 47840; September 22, 1977).

Unit 5: East End South

Unit 5 consists of 19 ac (7.7 ha) of privately owned lands located at Estate Jack's Bay and Estate Isaac's Bay, Christiansted, St. Croix, USVI. This unit is located south of the eastern end portion of the island, approximately 0.93 mi (1.5 km) southwest of Point Udall, approximately 0.02 mi (0.04 km) east of Point Road, along the north coast of Jack's Bay, and south of a Jack's and Issac's Bay Preserve trail. It is owned by The Nature Conservancy and managed as conservation land. This unit is not occupied at the time of listing. However, it is part of the historical range of the species. This unit is essential for the conservation of the species because it contains the PCEs and because its designation will safeguard other established populations in case of any stochastic event that occurs within habitats currently occupied by the species.

Unit 6: East End North

Unit 6 consists of 22 ac (8.9 ha) of territory-owned land located at Estate Cotton Garden, Christiansted, St. Croix, USVI. This unit is located north of the eastern end portion of the island, approximately 0.86 mi (1.4 km) northwest of Point Udall, north of Road 82 along the eastern coast of Cotton Garden Bay and western coast of Boiler Bay. This unit is not occupied at the time of listing. However, it is part of the historical range of the species. This unit is essential for the conservation of the species because it contains the PCEs and because its designation will safeguard other established populations in case of any stochastic event that occurs within habitats currently occupied by the species.

Gonocalyx concolor

TABLE 2—OCCUPANCY OF GONOCALYX CONCOLOR BY DESIGNATED CRITICAL HABITAT UNITS

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Occupied at time of listing	Land ownership	Size of unit in acres (hectares)
Gonocalyx concolor			
1. Cerro La Santa	Yes	Commonwealth of Puerto Rico	18.8 (7.6)
2. Charco Azul	Yes	Commonwealth of Puerto Rico	179.2 (72.5)
Total			198 (80.1)

Note: Area sizes may not sum due to rounding.

Unit 1: Cerro La Santa

Unit 1 consists of 18.8 ac (7.6 ha) of elfin forest located on exposed peaks and ridges of Cerro La Santa, above 2,890 ft (880 m) in elevation from sea level. This unit is located in the Sierra de Cayey on Road PR 184, Km 27.1 in Espino Ward, between the Municipalities of Cayey and San Lorenzo. This unit is within the geographical area occupied by the species at the time of listing. This unit contains all PCEs. The PCEs in this unit may require special considerations to address threats of habitat modification resulting from maintenance and potential expansion of existing telecommunication facilities, human-induced fires, invasive species, and degradation of forest quality.

Unit 2: Charco Azul

Unit 2 consists of 179.2 ac (72.5 ha) of ausubo forest located along the Rio Grande de Patillas River basin between 2,030 ft (620 m) and 2,330 ft (720 m) in elevation from sea level. This unit is approximately 2.0 mi (3.2 km) southeast of Unit 1. This unit is within the geographical area occupied by the species at the time of listing. This unit contains all PCEs. The PCEs in this unit may require special considerations and protection to address threats of habitat modification resulting from human-induced fires, invasive species, and degradation of forest quality.

Varronia rupicola

TABLE 3—OCCUPANCY OF VARRONIA RUPICOLA BY DESIGNATED CRITICAL HABITAT UNITS

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Occupied at time of listing	Land ownership	Size of unit in acres (hectares)
Varronia rupicola			
1. Montalva	Yes	Commonwealth of Puerto Rico	992 (401)
2. Guánica Commonwealth Forest	Yes	Commonwealth of Puerto Rico	584 (236)
3. Montes de Barina	Yes	Private	2,002 (810)
4. Peñón de Ponce	Yes	Private	2,174 (880)
5. Punta Negra	No	Commonwealth of Puerto Rico	291 (117)
6. Puerto Ferro	Yes	Federal Government	381 (154)
7. Cerro Playuela	No	Federal Government	123 (50)

TABLE 3—OCCUPANCY OF VARRONIA RUPICOLA BY DESIGNATED CRITICAL HABITAT UNITS—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Occupied at time of listing	Land ownership	Size of unit in acres (hectares)
Total			6,547 (2,648)

Note: Area sizes may not sum due to rounding

Unit 1 consists of 992 ac (401 ha) of Commonwealth-owned lands located at Montalva Ward in the Municipality of Guánica, Puerto Rico. This unit is located just south of State Highway PR 324 and the Town of Guánica, and includes Cerro Montalva. It is within the geographical area occupied by the species at the time of listing. Due to the marginal agricultural value, these forests were minimally impacted by other land use practices (e.g., charcoal production and ranching). Therefore, the prime and essential habitat for the species has maintained its unique features, such as the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. Despite its conservation status the habitat has been affected by human-induced fires and maintenance of access roads and rights-of-way. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, hurricanes, and habitat modification (e.g., urban development).

Unit 2: Guánica Commonwealth Forest

Unit 2 consists of 584 ac (236 ha) of Commonwealth-owned lands located within Carenero and Barina Wards in the municipalities of Guánica and Yauco, Puerto Rico. This unit is located within the core of the east section of the Guánica Commonwealth Forest. The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. It is within the geographical area occupied by the species at the time of listing and contains the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. Despite its conservation status, the habitat has been affected by human-induced fires and maintenance of access roads and rights-of-way. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, hurricanes, and habitat modification (e.g., urban development and right-of-way maintenance).

Unit 3: Montes de Barina

Unit 3 consists of 2,002 ac (810 ha) of privately owned lands primarily located along Indios Ward in the municipality of Guayanilla. A small section of this unit falls within the Barinas Ward in Yauco, Puerto Rico. This unit is located just south of State Highway PR 2. The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. The unit is within the geographical area occupied by the species at the time of listing and contains the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, hurricanes, and habitat modification (e.g., urban development).

Unit 4: Peñón de Ponce

Unit 4 consists of 2,174 ac (880 ha) of privately owned lands located along Encarnación and Canas Wards in the municipalities of Peñuelas and Ponce, Puerto Rico. This unit is located just north of State Highway PR 2 in the area known as Punta Cucharas. The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. It is within the geographical area occupied by the species at the time of listing and contains the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, hurricanes, and habitat modification (e.g., urban development).

Unit 5: Punta Negra

Unit 5 is a small peninsula that consists of 291 ac (117 ha) of Commonwealth-owned lands located within Puerto Real Ward on the island of Vieques, Puerto Rico. This unit is located about 1.5 mi (2.5 km) east of the town of Esperanza and west of Puerto Ferro, Vieques National Wildlife Refuge (NWR). This natural area is managed by the Puerto Rico DNER as part of the Puerto Mosquito Natural Reserve. The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. It is adjacent to an area currently occupied by the species (Unit 6), forming a continuous habitat and contains the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. However, there is no specific record of the species within this unit. This unit is essential for the conservation of the species because it contains the PCEs and because its designation will safeguard other established populations in case of any stochastic event that occurs within habitats currently occupied by the species.

Further, we consider Units 5, 6, and 7 to be a single ecological unit. The species is expected to occur within this area, and ecological interactions and genetic flow between this area and Units 6 and 7 may be essential for the recovery of the species. It was not included as a single unit with Units 6 and 7 because these peninsulas are united by a narrow mangrove forest that does not provide habitat for the species. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, and hurricanes.

Unit 6: Puerto Ferro

Unit 6 is a small peninsula that consists of 381 ac (154 ha) of federally owned lands managed by the Service as the Vieques NWR, and is located within the Puerto Ferro Ward on the island of Vieques, Puerto Rico. This unit is

located about 4 km (2.5 mi) east of the town of Esperanza. It is located just between Unit 5 and Unit 7, forming a continuous habitat and contains the dry coastal shrubland habitat PCEs and PBFs, and therefore we consider Units 5, 6, and 7 to be a single ecological unit. The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. It is within the geographical area occupied by the species at the time of listing and contains the dry coastal shrubland habitat PCEs and PBFs, including suitable climate, substrates, and associated native plants and forest structure. It was not included as a single unit with Units 5 and 7 because these peninsulas are united by a narrow mangrove forest that does not provide habitat for the species. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, and hurricanes.

Unit 7: Cerro Playuela

Unit 7 is a small peninsula that consists of 123 ac (50 ha) of federally owned lands managed by the Service as the Vieques NWR, and is located within Puerto Ferro Ward on the island of Vieques, Puerto Rico. This unit is located about 0.5 km (0.31 mi) south of the former airport of Campamento García (Vieques NWR). The forested habitat in this unit was minimally impacted by other land use practices like charcoal production and ranching due to its marginal agricultural value; hence, it has maintained its unique features. It is adjacent to an area currently occupied by the species (Unit 6), forming a continuous habitat. However, there is no specific record of the species within this unit. This unit is essential for the conservation of the species because it contains the PCEs and because its designation would safeguard other established populations in case of any stochastic event that occurs within habitats currently occupied by the species. Further, we consider Units 5, 6, and 7 to be a single ecological unit. The species is expected to occur within this area, and ecological interactions and genetic flow between this area and Unit 6 may be essential for the recovery of the species. It was not included as a single unit with Units 5 and 6 because these peninsulas are united by a narrow mangrove forest that does not provide habitat for the species. The PCEs in this unit may require special considerations to address threats of nonnative plant species, human-induced fires, and hurricanes.

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 species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

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,* 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 us. 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 U.S. Army Corps of Engineers 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 and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. 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 *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* 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 *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* These activities include, but are not limited to:

(1) Actions that would appreciably degrade or destroy the physical or biological features for the species. Such activities could include, but are not limited to, clearing or cutting native live trees and shrubs (e.g., bulldozing, vegetation pruning, construction, road building, maintenance of rights-of-way for powerlines, and herbicide application). These activities could pose a risk of take by fire to the survival of *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.*

(2) Actions that would introduce or encourage the spread of nonnative plant species that would significantly alter vegetation structure. Such activities may include, but are not limited to, residential and commercial development and road construction. These activities can affect the growth, reproduction, and survival of *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.*

(3) Actions that would significantly alter the structure and function of the elfin forest or the ausubo forest within the Carite Commonwealth Forest. Removal of vegetation could alter or eliminate the microclimate (e.g., change in temperature and humidity levels) and may allow invasion of competitor species and thereby negatively affect the habitat necessary for all life stages of *Gonocalyx concolor.*

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 critical habitat designation.

Consideration of Impacts Under 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 she 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. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects constitute our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2014). The analysis was made available for public review and we accepted public comments on the analysis from May 21, 2014, through June 20, 2014 (79 FR 29150). Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that pertained to our consideration of the probable incremental economic impacts of this critical habitat designation and developed a final economic analysis (FEA). The FEA is summarized below and available in the screening analysis for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* (IEc 2014), available at *http://www.regulations.gov.* Copies of the DEA, FEA, and any supporting documents, may be obtained by contacting the Caribbean Ecological Services Field Office (see **ADDRESSES**).

The FEA addresses how probable 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. Decision-makers can use this information to evaluate whether the effects of the designation might unduly burden a particular group, area, or economic sector. The FEA assesses the economic impacts of *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* conservation efforts associated with the following categories of activity: Residential and commercial development; transportation projects; recreational activities; agricultural activities; removal of unexploded ordinance; and changes to the Commonwealth Forests' Master Plan, which may trigger additional regulatory changes.

In general, in the occupied critical habitat units, because *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* are narrow endemic species, the quality of habitat is closely linked to the species' survival (USFWS 2013). Consequently, the Service believes that in most circumstances, there will be no conservation efforts needed to prevent adverse modification of occupied critical habitat beyond those that would be required to avoid jeopardy to the species. In the unoccupied critical habitat units, the areas are already set aside for conservation purposes, and all anticipated activities should be consistent with protection of the species. Any anticipated incremental costs of the critical habitat designation costs will predominantly be administrative in nature and would not be significant. Furthermore, the designation of critical habitat is not likely to result in an increase of consultations, but rather only the additional administrative effort within each consultation to address the effects of each proposed agency action on critical habitat.

Our FEA did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not

exercising her discretion to exclude any areas from this designation of critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* based on economic impacts.

Exclusions Based on National Security Impacts or Homeland 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 *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exerting her discretion to exclude any areas from this final designation based on impacts on national security or homeland 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 there are conservation partnerships that 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.

There is a Master Forest Management Plan that includes the Carite Commonwealth Forests and Guánica Commonwealth Forest. *Gonocalyx concolor* located within Carite Commonwealth Forest and *Varronia rupicola* located within Guánica Commonwealth Forest are managed by the Puerto Rico Department of Natural and Environmental Resources. The Master Management Plan promotes the use and enjoyment of the natural resources at the forests, although it establishes that the activities should not affect important species for the Commonwealth of Puerto Rico. The management plans do not include protection or conservation measures specific for *Gonocalyx concolor* or *Varronia rupicola,* and thus we do not consider them to be approved management plans for these plants.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for *Agave eggersiana, Gonocalyx concolor,* or *Varronia rupicola,* 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 her 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 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs 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 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 (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (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.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts 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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have

a significant economic impact on a substantial number of small entities.

As discussed under *Exclusions Based on Economic Impacts* above, during the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation 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. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

The economic analysis found that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* 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 because it 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. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. The final economic analysis concludes incremental impacts may occur due to administrative costs of section 7 consultations for activities related to commercial, residential, and recreational development and associated actions; however, these are not expected to significantly affect small government entities. Consequently, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, receive 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 FEA found that no significant economic impacts are likely to result from the designation of critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola.* Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for *Agave eggersiana, Gonocalyx concolor,* and *Varronia rupicola* does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact 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 and Territorial resource agencies in St. Croix, USVI, and the Commonwealth of Puerto Rico. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies.

The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological 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 these local governments in long-range planning (because these local governments no longer have to 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 Executive Order 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 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 physical or biological features essential to the conservation of the *Agave eggersiana, Gonocalyx concolor*, and *Varronia rupicola*. 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), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above, we are not designating critical habitat for *Agave eggersiana, Gonocalyx concolor*, or *Varronia rupicola* on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) as follows:

■ a. By adding Family Agavaceae, in alphabetical order, to the list of families.

■ b. By adding an entry for *Agave eggersiana* in alphabetical order under Family Agavaceae.

■ c. By adding the word "Family" immediately before the word "Boraginaceae" in the heading of the entry "Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck)."

■ d. By adding an entry for *Varronia rupicola* in alphabetical order under Family Boraginaceae.

■ e. By adding an entry for *Gonocalyx concolor* in alphabetical order under Family Ericaceae.

These additions read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Agavaceae: *Agave eggersiana* (No Common Name)

(1) Critical habitat units are depicted for St. Croix, USVI, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Agave eggersiana* consist of these components:

(i) Areas consisting of coastal cliffs and dry coastal shrublands.

(A) Coastal cliff habitat includes:

(*1*) Bare rock; and

(*2*) Sparse vegetation.

(B) Dry coastal shrubland habitat includes:

(*1*) Dry forest structure; and

(*2*) A plant community of predominately native vegetation.

(ii) Well-drained soils from the series Cramer, Glynn, Hasselberg, Southgate, and Victory.

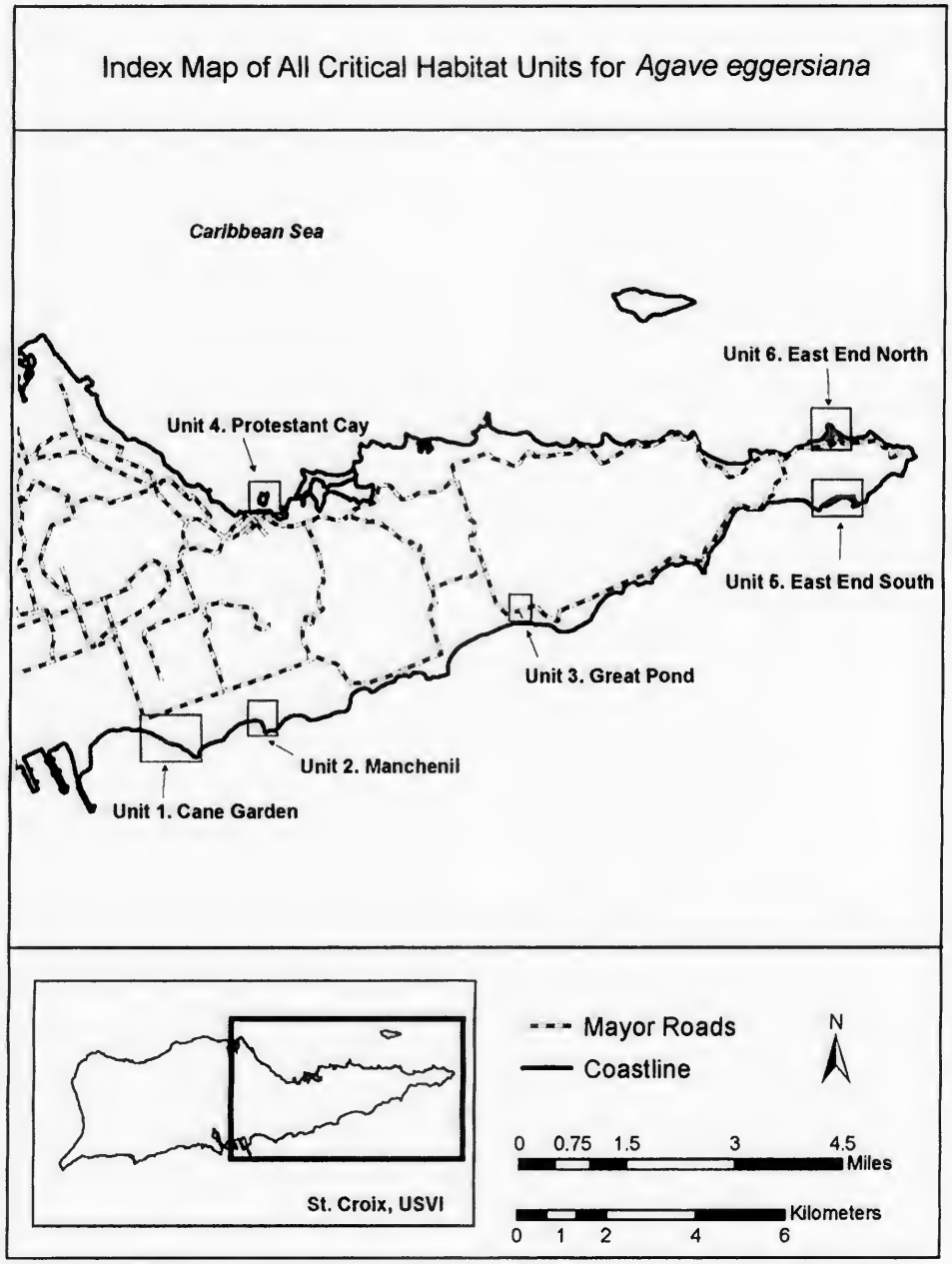
(iii) Habitat of sufficient area to sustain viable populations in the coastal cliffs and dry coastal shrublands described in paragraphs (2)(i)(A) and (2)(i)(B) of this entry.

(3) Critical habitat does not include manmade structures (such as buildings, bridges, docks, aqueducts, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on October 9, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of an aerial image (USCOE) and USFS–IITF Landcover GAP raster. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) North American Datum (NAD) 1983 Zone 20 N coordinates. 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 Service's Internet site at *http://www.fws.gov/caribbean/es,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0040, and at the field office responsible for this designation. 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) Index map of critical habitat units for *Agave eggersiana* follows:

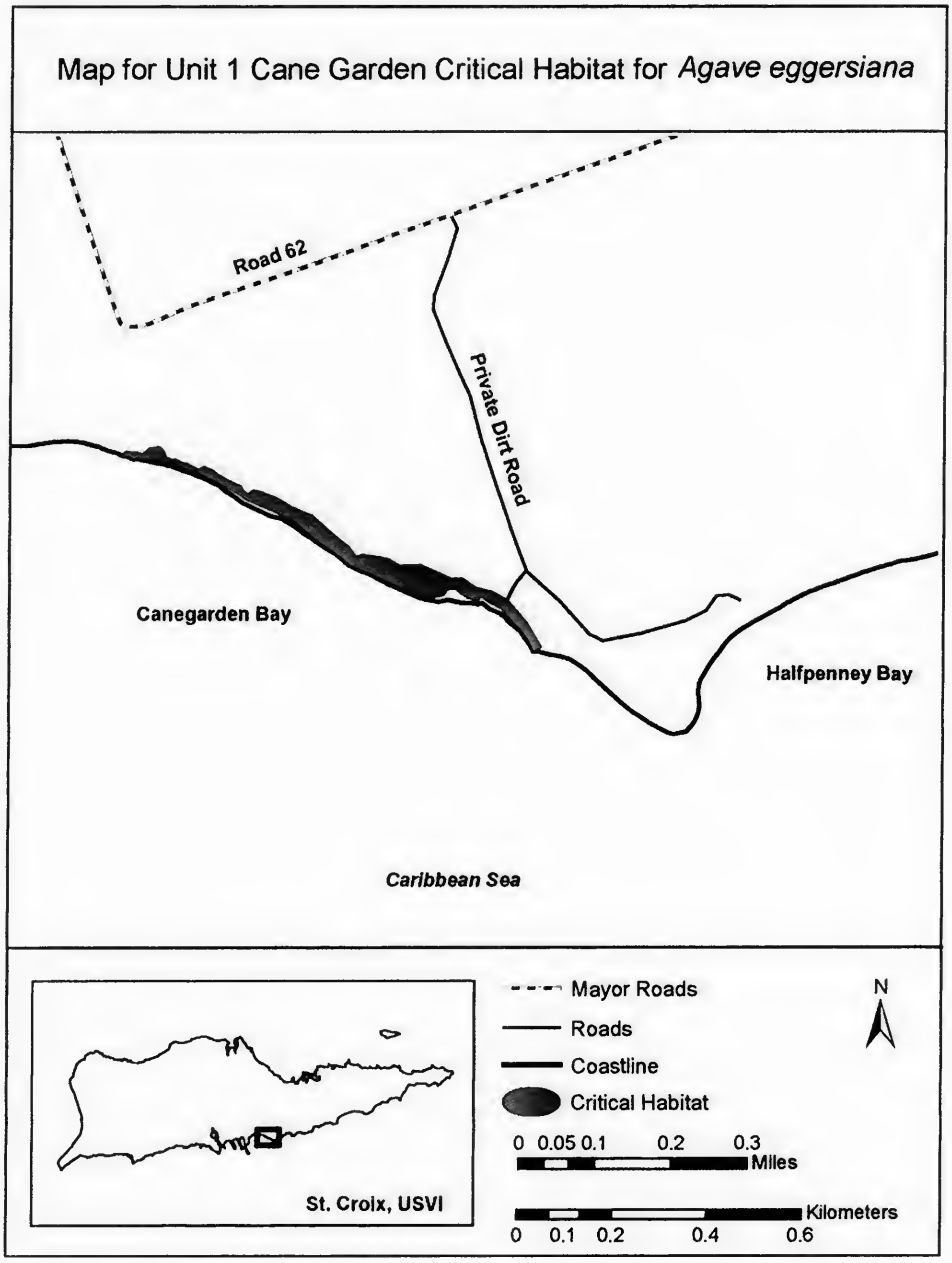
BILLING CODE 4310–55–P



(6) Unit 1: Cane Garden, Estate Cane Garden and Estate Peters Mindle, Christiansted, St. Croix, USVI.

(i) Unit 1 includes 6.9 acres (ac) (2.8 hectares (ha)).

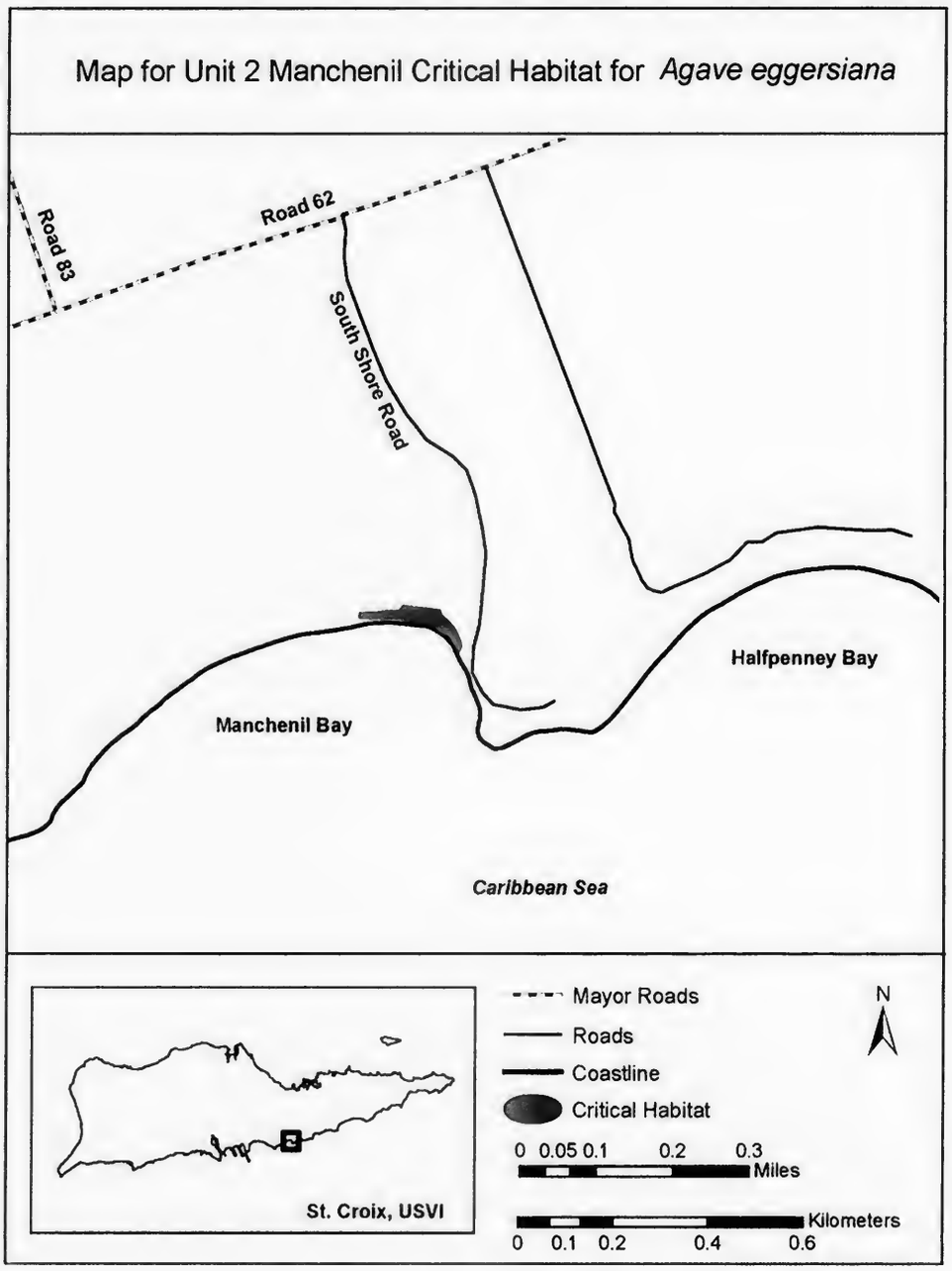
(ii) Map of Unit 1 follows:



(7) Unit 2: Manchenil, Estate Granard, Christiansted, St. Croix, USVI.

(i) Unit 2 includes 1.5 ac (0.61 ha).

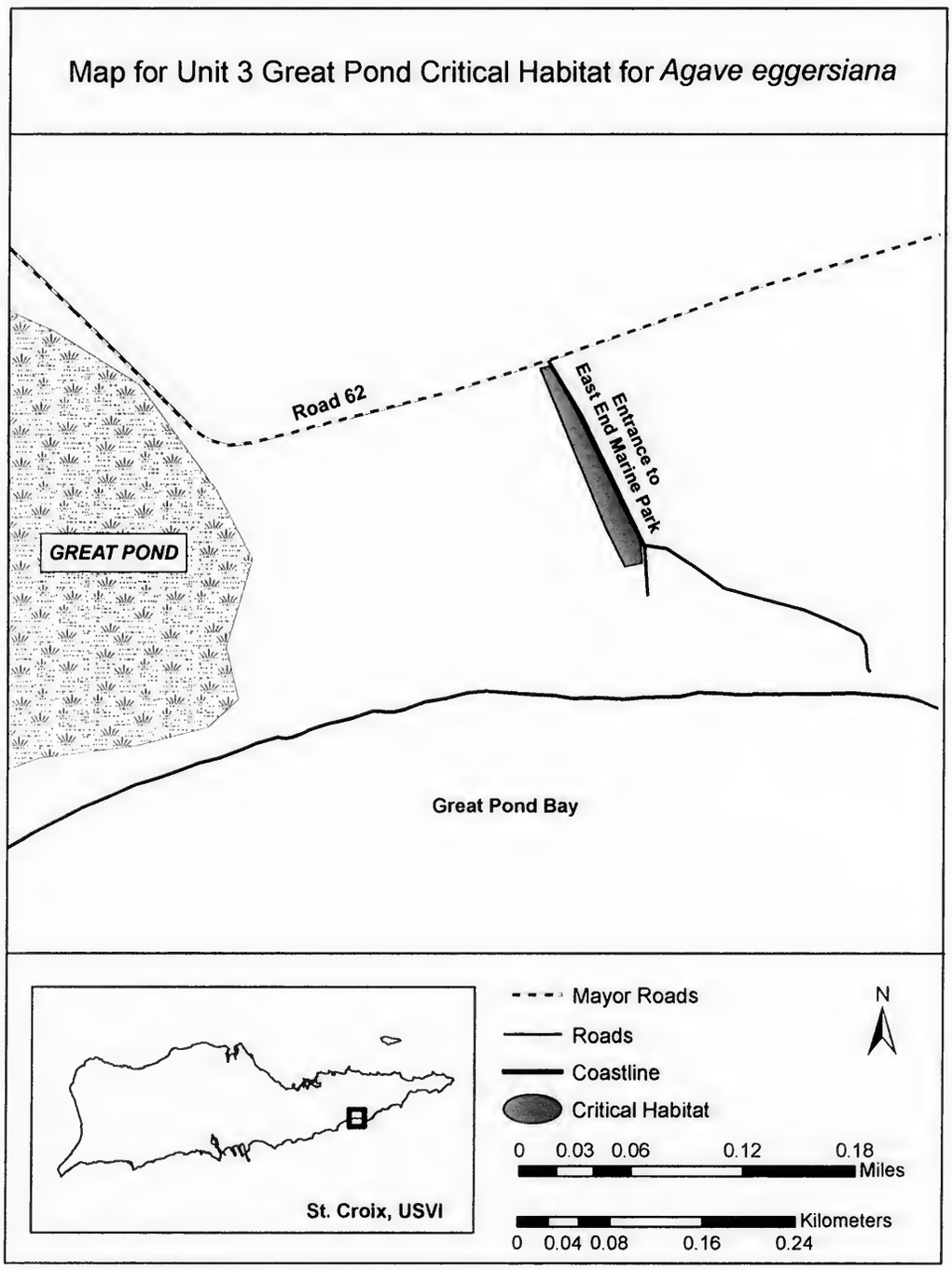
(ii) Map of Unit 2 follows:



(8) Unit 3: Great Pond, Estate Great Pond, Christiansted, St. Croix, USVI.

(i) Unit 3 includes 0.8 ac (0.32 ha).

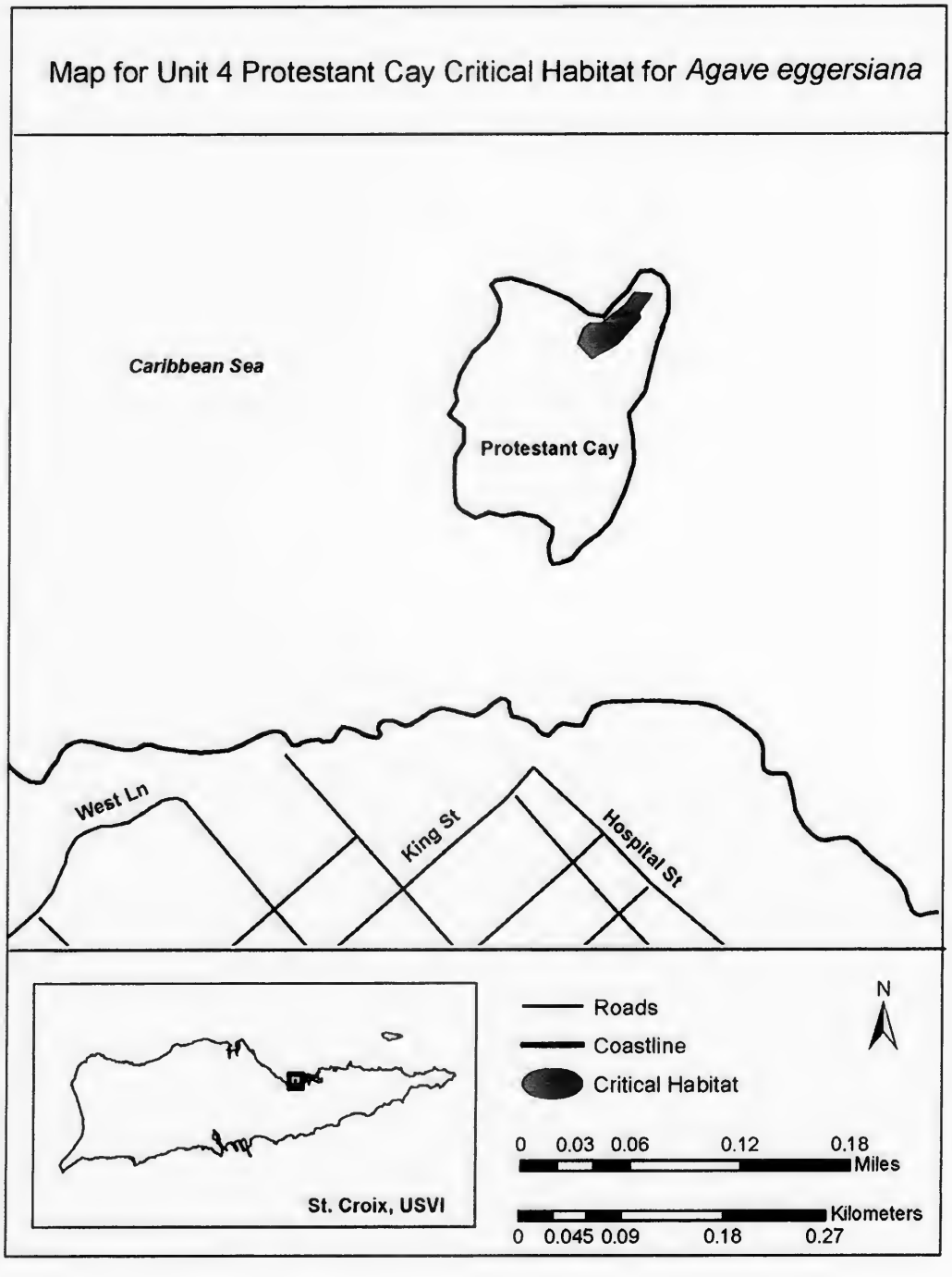
(ii) Map of Unit 3 follows:



(9) Unit 4: Protestant Cay, Protestant Cay, St. Croix, USVI.

(i) Unit 4 includes 0.4 ac (0.16 ha).

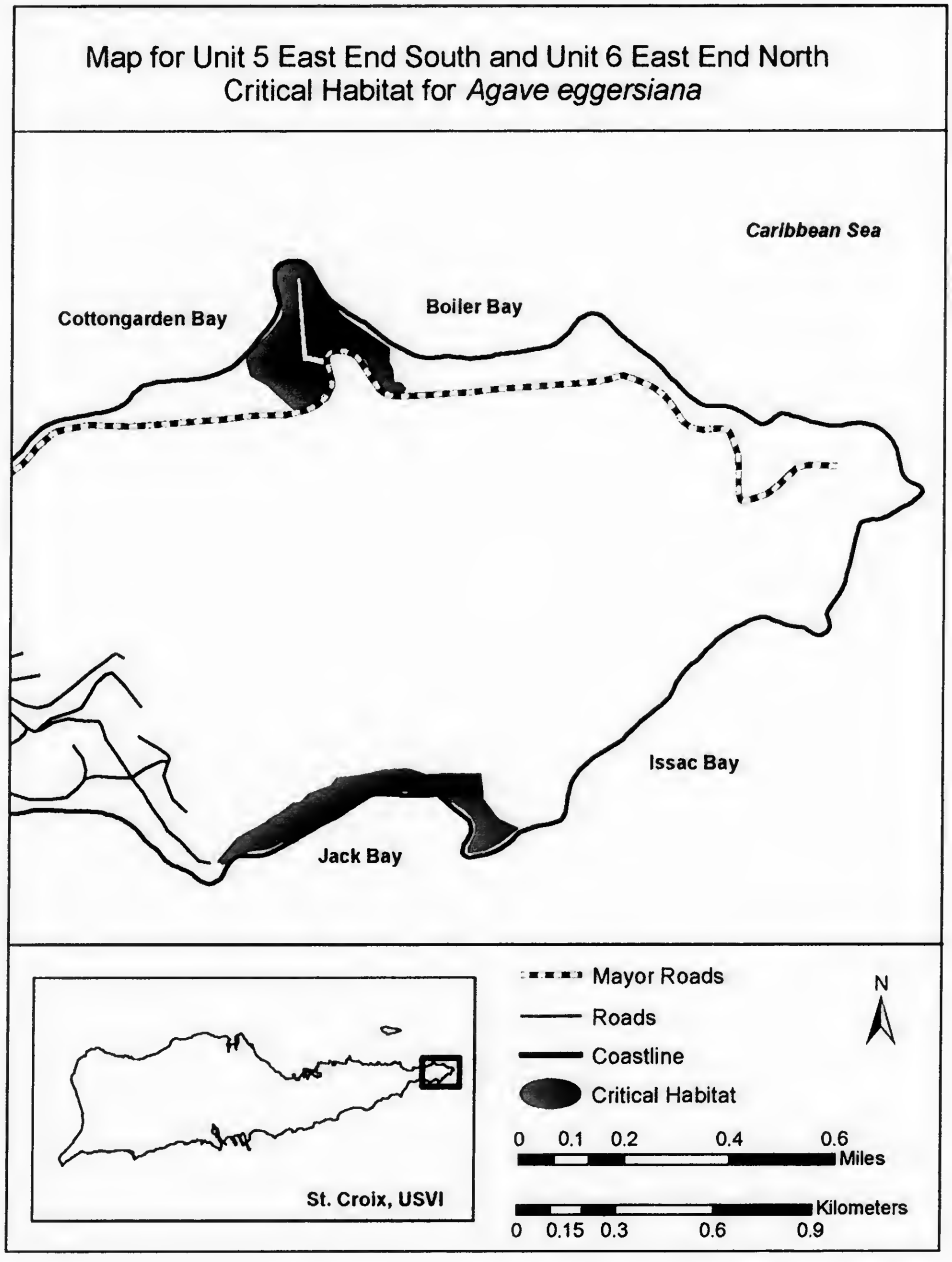
(ii) Map of Unit 4 follows:



(10) Unit 5: East End South, Estate Jack's Bay and Estate Issac's Bay, Christiansted, St. Croix, USVI.

(i) Unit 5 includes 19 ac (7.7 ha).

(ii) Map of Units 5 and 6 follows:



(11) Unit 6: East End North, Estate Cotton Garden, Christiansted, St. Croix, USVI.

(i) Unit 6 includes 22 ac (8.9 ha).

(ii) Map Unit 6 is provided at paragraph (10)(ii) of this entry.

* * * * *

Family Boraginaceae: *Varronia rupicola*

(1) Critical habitat units are depicted for the municipalities of Guánica, Yauco, Guayanilla, Peñuelas, Ponce, and Vieques, Commonwealth of Puerto Rico, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Varronia rupicola* consist of the following components:

(i) Remnants of native shrubland and scrubland forest on limestone substrate within the subtropical dry forest life zone. Dry shrubland and scrubland forest includes:

(A) Shrubland vegetation with canopy from 6.5 to 9.8 feet (ft) (2 to 3 meters (m)) high;

(B) Limestone pavement;

(C) Associated native vegetation; and

(D) A shrub layer dominated by *Croton humilis, Eupatorium sinuatum, Lantana reticulata,* and *Turnera diffusa.*

(ii) Semi-deciduous dry forest on limestone substrate within the subtropical dry forest life zone. Dry limestone semi-deciduous forest includes:

(A) Low forest with canopy from 8 to 15 ft (3 to 5 m) high;

(B) Limestone pavement;

(C) Associated dry forest native vegetation; and

(D) A shrub layer dominated by *Croton humilis, Eupatorium sinuatum, Lantana reticulata,* and *Turnera diffusa.*

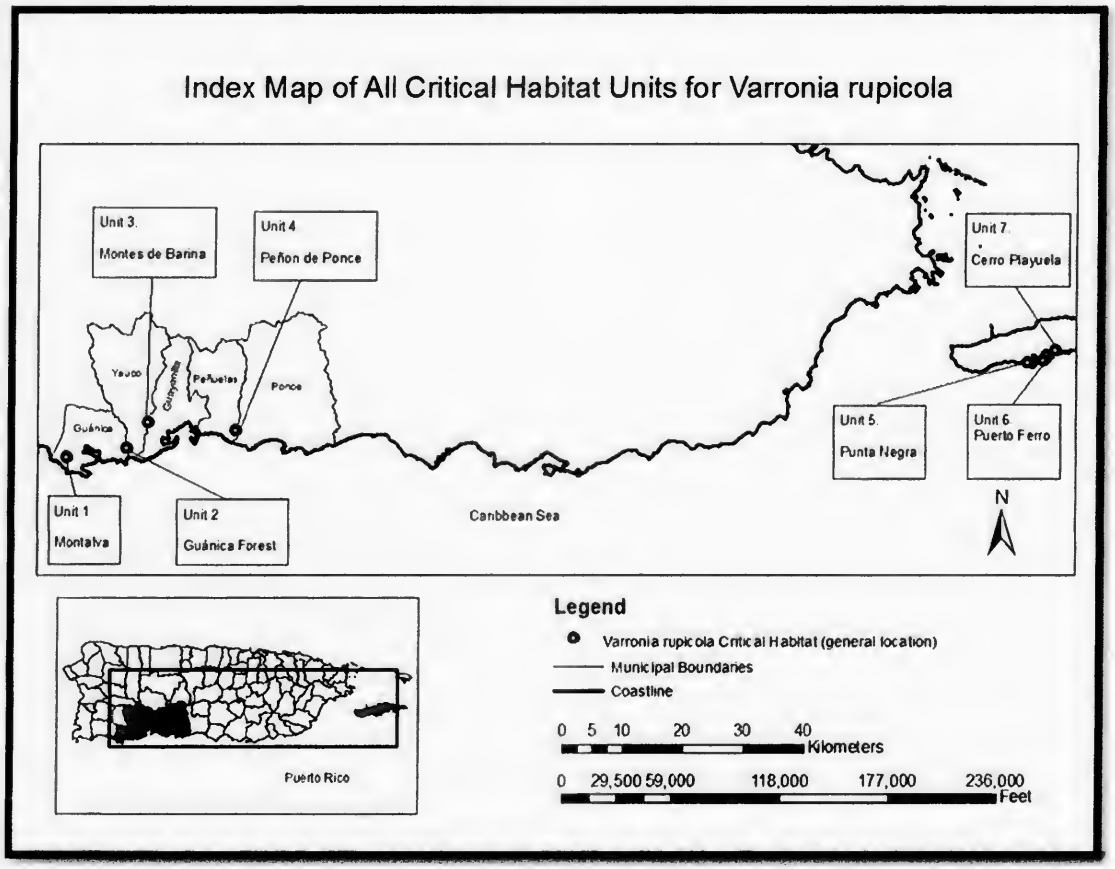
(iii) The type locations described paragraphs (2)(i) and (2)(ii) of this entry for this species should have shallow and

alkaline soils derived from limestone rock and an average rainfall of 34 in (86 cm).

(3) Critical habitat does not include manmade structures (such as houses, bridges, aqueducts, and paved areas) and the land on which they are located existing within the legal boundaries on October 9, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of an aerial image (ESRI image Basemap) and USFS–IITF Landcover GAP raster. Critical habitat units were then mapped using the Geographic Coordinate System-World Geodetic System (WGS) 1984 datum. 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 Service's Internet site at *http://www.fws.gov/caribbean/es,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0040, and at the field office responsible for this designation. 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.

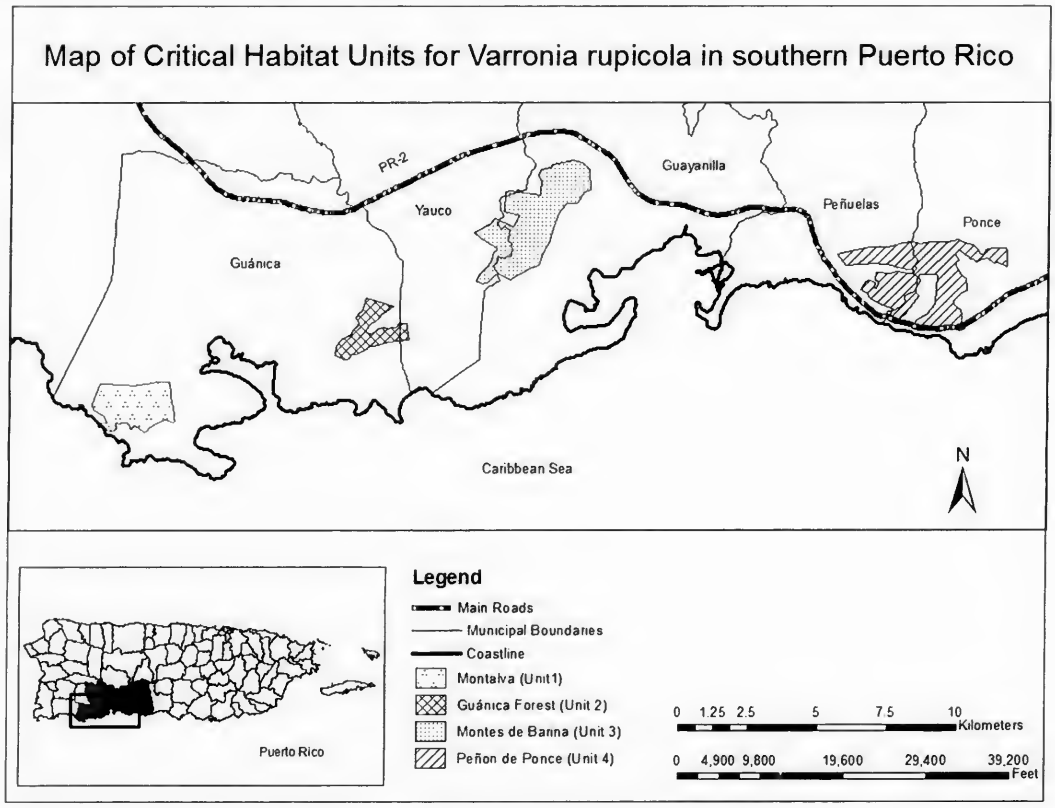
(5) Index map of critical habitat units for *Varronia rupicola* follows:



(6) Unit 1: Montalva, municipality of Guánica, Puerto Rico.

(i) Unit 1 includes 992 acres (ac) (401 hectares (ha)).

(ii) Map of Units 1, 2, 3, and 4 follows:



(7) Unit 2: Guánica Commonwealth Forest, municipalities of Guánica and Yauco, Puerto Rico.

(i) Unit 2 includes 584 ac (236 ha).

(ii) Map of Unit 2 is provided at paragraph (6)(ii) of this entry.

(8) Unit 3: Montes de Barina, municipalities of Yauco and Guayanilla, Puerto Rico.

(i) Unit 3 includes 2,002 ac (810 ha).

(ii) Map of Unit 3 is provided at paragraph (6)(ii) of this entry.

(9) Unit 4: *Peñón* de Ponce, municipalities of Peñuelas and Ponce, Puerto Rico.

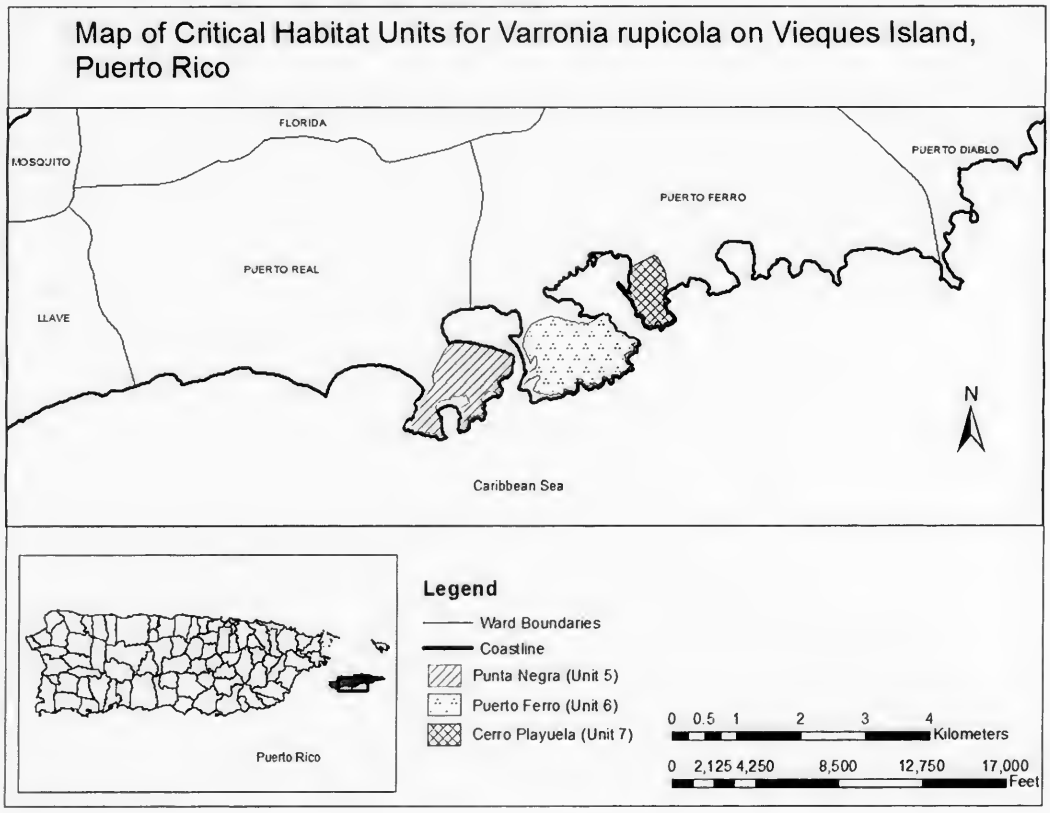
(i) Unit 4 includes 2,174 ac (880 ha).

(ii) Map of Unit 4 is provided at paragraph (6)(ii) of this entry.

(10) Unit 5: Punta Negra, municipality of Vieques, Puerto Rico.

(i) Unit 5 includes 291 ac (117 ha).

(ii) Map of Units 5, 6, and 7 follows:



(11) Unit 6: Puerto Ferro, municipality of Vieques, Puerto Rico.

(i) Unit 6 includes 381 ac (154 ha).

(ii) Map of Unit 6 is provided at paragraph (10)(ii) of this entry.

(12) Unit 7: Cerro Playuela, municipality of Vieques, Puerto Rico.

(i) Unit 7 includes 123 ac (50 ha).

(ii) Map of Unit 7 is provided at paragraph (10)(ii) of this entry.

* * * * *

Family Ericaceae: *Gonocalyx concolor*

(1) Critical habitat units are depicted for the municipalities of Cayey, San Lorenzo, and Patillas, Commonwealth of Puerto Rico, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Gonocalyx concolor* consist of these components:

(i) Elfin forest at elevations over 2,900 feet (ft) (880 meters (m)) in Cerro La Santa, Puerto Rico, which includes:

(A) Forest with single canopy layer with trees seldom exceeding 22 ft (7 m) in height.

(B) Associated native vegetation dominated by species such as *Tabebuia schumanniana, Tabebuia rigida, Ocotea spathulata, Eugenia borinquensis, Clusia minor,* and *Prestoea acuminata* var. *montana,* native ferns, and dense cover with epiphytes, including bromeliads and mosses.

(ii) Ausubo forest at elevations between 2,000 to 2,300 ft (620 to 720 m) in the Charco Azul, which includes:

(A) Forest with single canopy layer with trees exceeding 22 ft (7 m) in height.

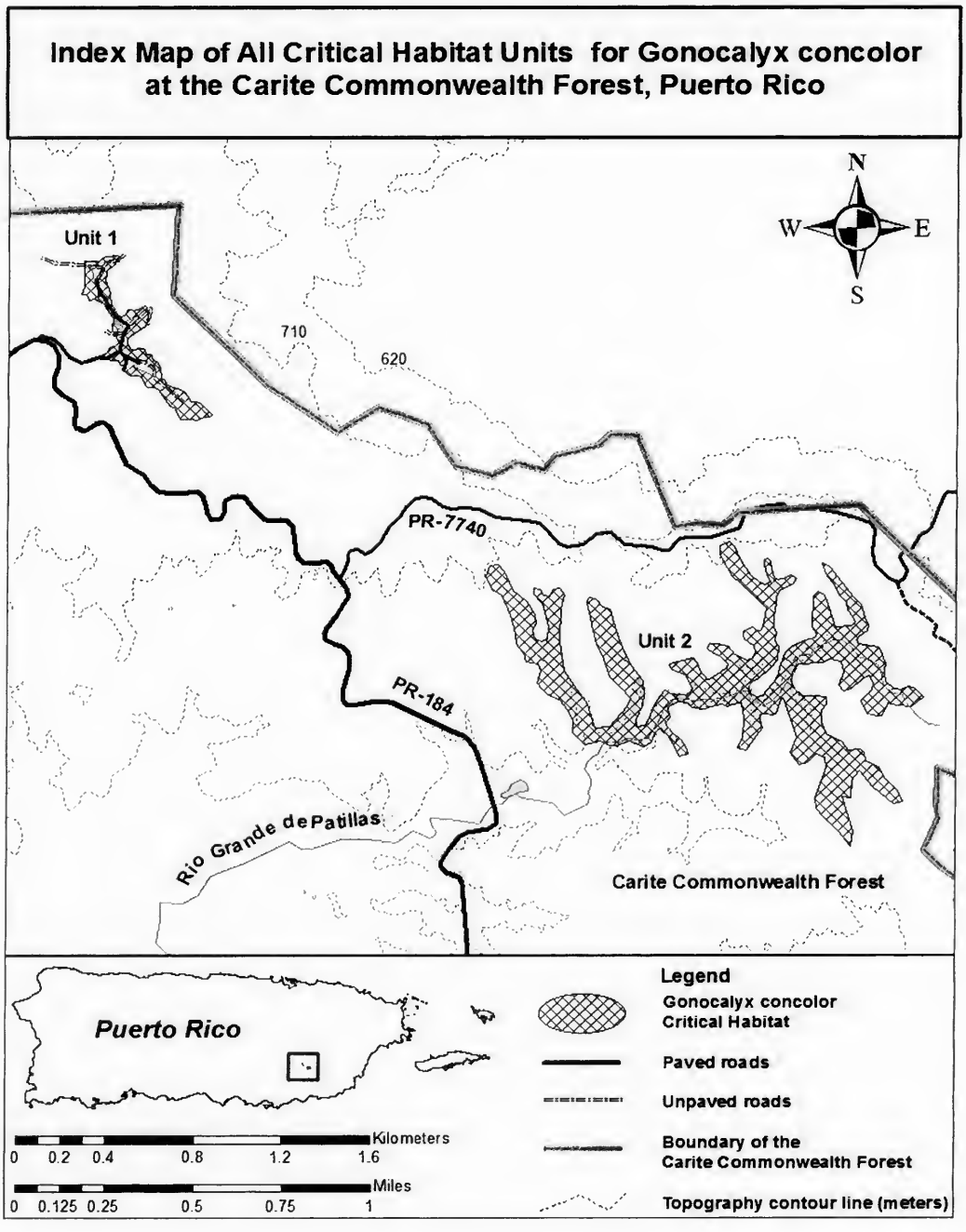
(B) Plant association comprised by few species of native trees and associated native vegetation (e.g., *Manilkara bidentata, Dacryodes excelsa, Guarea guidonia,* and *Cyrilla racemiflora*), native ferns, and dense cover with epiphytes, including bromeliads and mosses.

(iii) The type locations described in paragraphs (2)(i) and (2)(ii) of this entry for this species should have mean annual precipitation of 88.7 in (225.3 cm), mean annual temperature of 72.3 °F (22.7 °C), and Los Guineos type of soil (i.e., very deep, acidic, clayey, well-drained soils on side slopes of mountains).

(3) Critical habitat does not include manmade structures (such as bridges, docks, and aqueducts) and the land on which they are located existing within the legal boundaries on October 9, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using aerial photos (ArcGis) to limits of the boundaries of the elfin forest and ausubo forest. Critical habitat units were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a Geographic Information Systems program. 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 Service's Internet site at *http://www.fws.gov/caribbean/es,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0040, and at the field office responsible for this designation. 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.

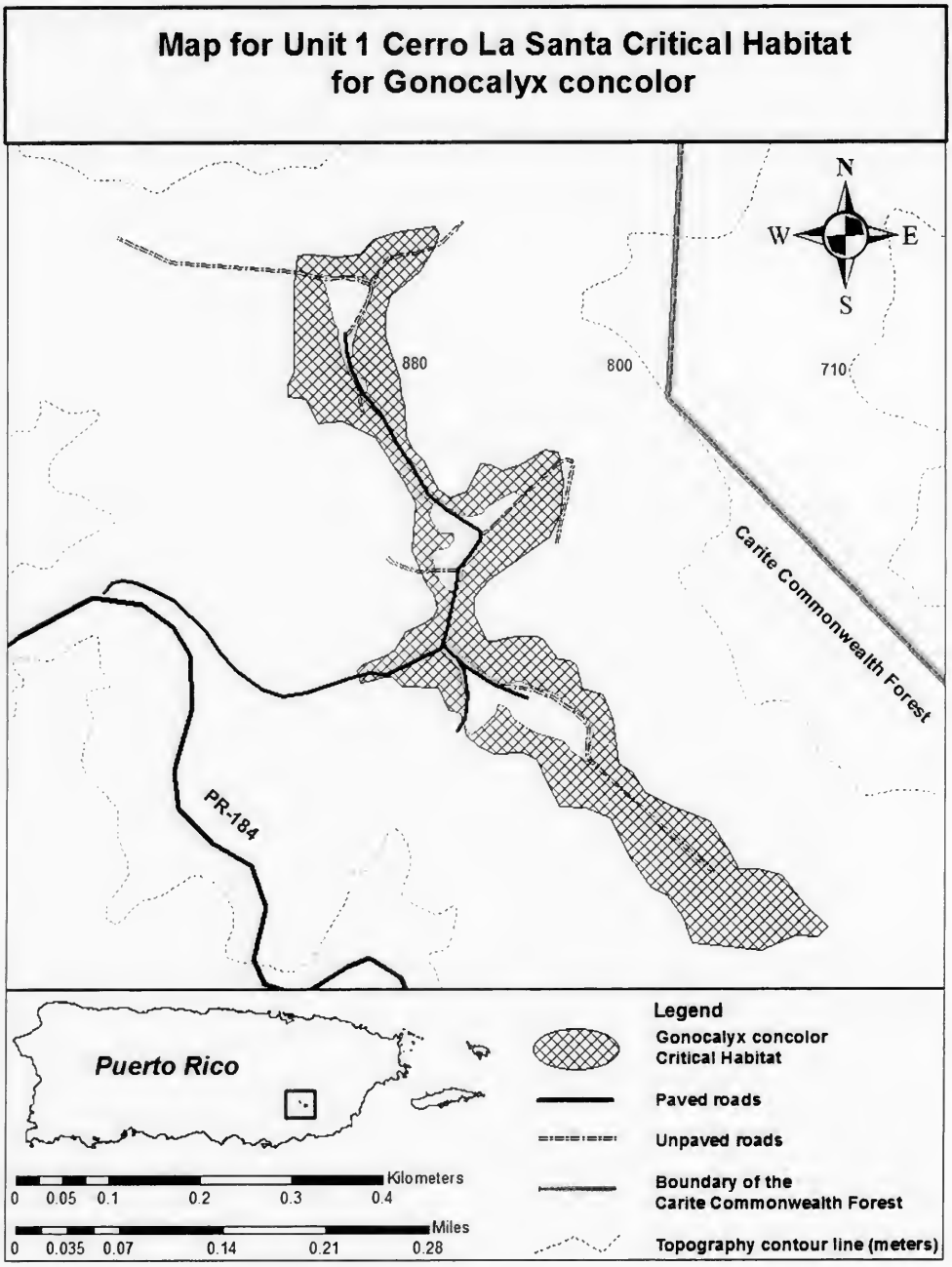
(5) Index map of critical habitat units for *Gonocalyx concolor* follows:



(6) Unit 1: Cerro La Santa, Carite Commonwealth Forest, Puerto Rico.

(i) Unit 1 includes 18.8 acres (ac) (7.6 hectares (ha)).

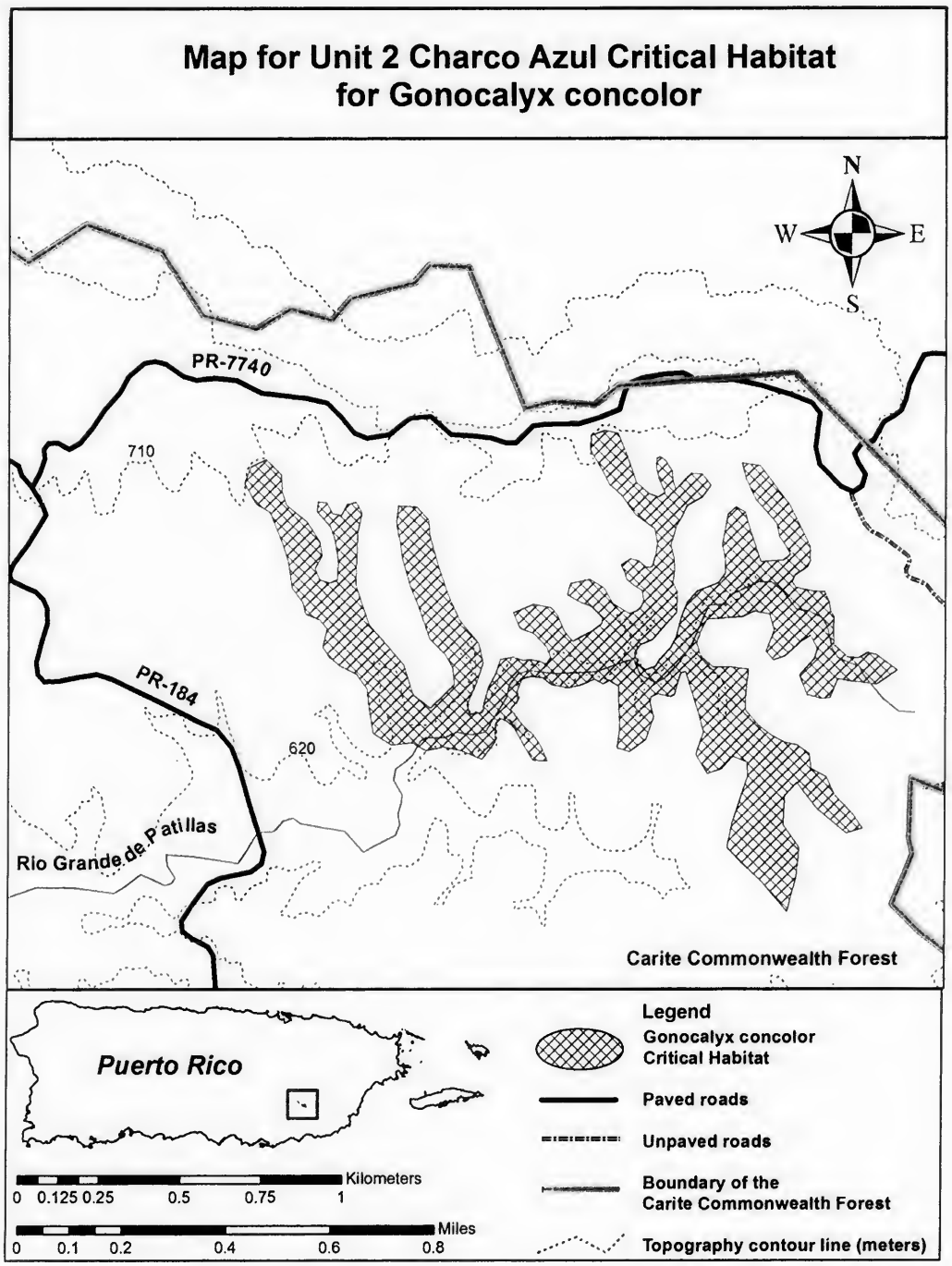
(ii) Map of Unit 1 follows:



(7) Unit 2: Charco Azul, Carite Commonwealth Forest, Puerto Rico.

(i) Unit 2 includes 179.2 ac (72.5 ha).

(ii) Map of Unit 2 follows:


Map for Unit 2 Charco Azul Critical Habitat for Gonocalyx concolor
N
W
E
S
PR-7740
710
PR-184
620
Rio Grande de Patillas
Carite Commonwealth Forest
Puerto Rico
Kilometers
0 0.125 0.25 0.5 0.75 1
Miles
0 0.1 0.2 0.4 0.6 0.8
Legend
Gonocalyx concolor Critical Habitat
Paved roads
Unpaved roads
Boundary of the Carite Commonwealth Forest
Topography contour line (meters)

* * * * *

Dated: August 26, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–21232 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130402317–3966–02]

RIN 0648–XD475

Gulf of Mexico Highly Migratory Species (HMS); Commercial Blacknose Sharks and Non-Blacknose Small Coastal Sharks (SCS) in the Gulf of Mexico Region

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the fisheries for commercial blacknose sharks and non-blacknose SCS in the Gulf of Mexico region. This action is necessary because the commercial landings of Gulf of Mexico non-blacknose SCS for the 2014 fishing season could exceed 80 percent of the available commercial quota as of September 5, 2014, and the fisheries are quota-linked under current regulations.

DATES: The commercial fisheries for blacknose sharks and Gulf of Mexico non-blacknose SCS in the Gulf of Mexico region are closed effective 11:30 p.m. local time September 9, 2014, until the end of the 2014 fishing season on December 31, 2014, or until and if NMFS announces via a notice in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Alexis Jackson or Karyl Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shark fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP), its amendments, and its implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), dealers must electronically submit reports on sharks that are first received from a vessel on a weekly basis through a NMFS-approved electronic reporting system. Reports must be received by no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Under § 635.28(b)(2), the quotas of certain species and/or management groups are linked. The quotas for blacknose sharks and the non-blacknose SCS management group in the Gulf of Mexico region are linked (§ 635.28(b)(3)(iv)). Under § 635.28(b)(2), when NMFS calculates that the landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until and if NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups are closed, even across fishing years.

On November 26, 2013 (78 FR 70500), NMFS announced that the commercial Gulf of Mexico blacknose shark quota for 2014 is 1.8 metric tons (mt) dressed weight (dw) (3,968 lb dw). The non-blacknose SCS quota was set at 221.6 mt dw, and divided into regions (Atlantic and Gulf of Mexico) for management purposes. The Atlantic region non-blacknose SCS quota is 79.5 percent of the base quota or 153.3 mt dw (150,574 lb dw), and the Gulf of Mexico non-blacknose SCS quota is 20.5 percent or 68.3 mt dw (150,574 lb dw). Current regulations specify that "[i]nseason and/or annual quota transfers of regional quotas between regions may be conducted only for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment." Although the non-blacknose SCS quota currently is split between regions for management purposes, transferring quota between the two regions would be inconsistent with accomplishing the objectives of the fishery management plan now that sharpnose and bonnethead have been split into separate stocks as a result of the stock assessment. Such a transfer would, essentially, disregard the scientific bases for splitting sharpnose and bonnethead sharks into two stocks, and there is no practicable way to analyze the impacts of and establish separate quotas for these stocks or the complex as a whole absent the amendment process. Thus, no such transfer will be made pursuant to 50 CFR 635.27(b)(2)(iii), which includes among the transfer criteria to be considered, "[e]ffects of the adjustment on the status of all shark species;" and "[e]ffects of the adjustment on accomplishing the objectives of the fishery management plan."

In the upcoming Amendment 6 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan, NMFS will be considering implementing total allowable catches and commercial quotas for the non-blacknose SCS complexes in the Atlantic and Gulf of Mexico regions, which includes the sharpnose and bonnethead stocks, based on the results of the SEDAR 34 assessment. Pending such an Amendment, the separate Atlantic and Gulf of Mexico sharpnose and bonnethead shark stocks remain within the overall non-blacknose SCS management complex, with the quotas for the complex designated for this fishing year. The next assessments for these two species are not yet scheduled but will include benchmark assessments for each stock.

Dealer reports recently received through August 29, 2014, indicate that 0.8 mt dw or 42 percent of the available Gulf of Mexico blacknose shark quota has been landed and 51.7 mt dw or 76 percent of the available Gulf of Mexico non-blacknose SCS quota has been landed. Based on projections, NMFS estimates that the 80-percent limit could be exceeded by September 5, 2014, or earlier. Accordingly, NMFS is closing both the commercial blacknose shark fishery and non-blacknose SCS management group in the Gulf of Mexico region as of 11:30 p.m. local time September 9, 2014. All other shark species or management groups that are currently open in the Gulf of Mexico region will remain open, including the blue shark, porbeagle shark, and pelagic sharks other than porbeagle or blue shark management groups.

At § 635.27(b)(1), the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region.

During the closure, retention of blacknose sharks and non-blacknose SCS in the Gulf of Mexico region is

prohibited for persons fishing aboard vessels issued a commercial shark limited access permit (LAP) under § 635.4. However, persons aboard a commercially permitted vessel that is also properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip could fish under the recreational retention limits for sharks and "no sale" provisions (§ 635.22(a) and (c)).

During this closure, a shark dealer issued a permit pursuant to § 635.4 may not purchase or receive blacknose sharks or non-blacknose SCS in the Gulf of Mexico region from a vessel issued a shark LAP, except that a permitted shark dealer or processor may possess blacknose sharks and/or non-blacknose SCS in the Gulf of Mexico region that were harvested, off-loaded, and sold, traded, or bartered prior to the effective date of the closure and were held in storage consistent with § 635.28(b)(5). Similarly, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with relevant state regulations, purchase or receive blacknose sharks and/or non-blacknose SCS in the Gulf of Mexico region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fisheries are currently underway and any delay in this action would result in overharvest of the Gulf of Mexico non-blacknose SCS quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the stock may be negatively affected and fishermen ultimately could experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: September 4, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–21376 Filed 9–4–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 174
Tuesday, September 9, 2014

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

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 319

[Docket No. APHIS–2010–0082]

RIN 0579–AD71

Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations governing the importations of fruits and vegetables by broadening our existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. We are also proposing to remove the region- or commodity-specific phytosanitary requirements currently found in these regulations. Likewise, we are proposing an equivalent revision of the performance standard in our regulations governing the interstate movements of fruits and vegetables from Hawaii and the U.S. territories (Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) and the removal of commodity-specific phytosanitary requirements from those regulations. This proposal would allow for the approval of requests to authorize the importation or interstate movement of new fruits and vegetables in a manner that enables a more flexible and responsive regulatory approach to evolving pest situations in both the United States and exporting countries. It would not however, alter the science-based process in which the risk associated with importation or interstate movement of a given fruit or vegetable is evaluated or the manner in which risks associated with the importation or interstate movement of a fruit or vegetable are mitigated.

DATES: We will consider all comments that we receive on or before November 10, 2014.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2010–0082.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0082, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2010–0082* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Nicole L. Russo, Assistant Director, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2159.

SUPPLEMENTARY INFORMATION:

Background

Foreign Quarantine Notices

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–70, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

In a final rule published in the **Federal Register** on July 18, 2007 (72 FR 39482–39528, Docket No. APHIS–2005–0106), and effective on August 17, 2007, we established a process by which we allow certain fruits and vegetables to be approved for importation. That rule established a notice-based process for approving the importation of fruits or vegetables that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in § 319.56–4(b) of the regulations. These measures, which are referred to elsewhere in this document as designated phytosanitary measures or designated phytosanitary measures of the fruits and vegetables regulations, are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization (NPPO) of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are imported as commercial consignments only.

Under the notice-based process, amendments to the regulations are not needed, as approval of fruits and vegetables for importation from various countries or regions is accomplished via the publication of notices in the **Federal Register** (this practice is described in detail below under the heading "Current Processes"). To list approved commodities and the requirements for their importation, APHIS's Plant Protection and Quarantine (PPQ) program developed the Fruits and Vegetables Import Requirements (FAVIR) database, which is accessible via the APHIS Web site.[1] FAVIR includes not only those commodities approved using the notice-based process, but also commodities approved through rulemaking. FAVIR allows individuals to search for authorized fruits and vegetables by commodity or

[1] You may search FAVIR at *http://www.aphis.usda.gov/favir/.*

country, and quickly and easily determine the requirements for their importation into the United States. In addition, FAVIR allows APHIS officials and the Department of Homeland Security's Customs and Border Protection agricultural inspectors to quickly determine whether or not a fruit or vegetable is authorized entry into the United States. Approved commodities are also listed in PPQ's Fresh Fruits and Vegetables Import Manual and will continue to be so listed.

Hawaii and Territories Quarantine Notices

The regulations in 7 CFR part 318, "State of Hawaii and Territories Quarantine Notices" (referred to below as the Hawaii and territories regulations), prohibit or restrict the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

In a final rule published in the **Federal Register** on January 16, 2009 (74 FR 2770–2786, Docket No. APHIS–2007–0052), we revised those regulations in order to establish a regulatory approach that is similar but not identical to that in the fruits and vegetables regulations discussed above. That final rule established a notice-based process for approving the interstate movement of fruits or vegetables from Hawaii and the territories that, based on the findings of a pest risk analysis, can be safely moved interstate subject to one or more of the designated phytosanitary measures listed in § 318.13–4(b) of the regulations. These measures, which are referred to elsewhere in this document as designated phytosanitary measures or designated phytosanitary measures of the Hawaii and territories regulations, are:

- The fruits and vegetables are inspected in the State of origin or in the first State of arrival;
- The fruits and vegetables originated from a pest-free area in the State of origin and the grower from which the fruit or vegetable originated has entered into a compliance agreement with the Administrator;
- The fruits and vegetables are treated in accordance with 7 CFR part 305 and the treatment is certified by an inspector;
- The fruits and vegetables are inspected and certified in the State of origin by an inspector and have been found free of one or more specific quarantine pests identified by risk analysis as likely to follow the pathway;
- The fruits and vegetables are moved as commercial consignments only; and/or
- The fruits and vegetables may be distributed only within a defined area and the boxes or containers in which the fruits or vegetables are distributed must be marked to indicate the applicable distribution restrictions.

Commodity-Specific Requirements

The notice-based approach described above for imports and for interstate movement from Hawaii and the territories allows us to maintain our science- and risk-based evaluation process and shorten the administrative process involved in approval of new fruits and vegetables, while continuing to provide opportunity for public comment and engagement on the science- and risk-based analysis associated with such imports and interstate movements. It also enables us to adapt our import requirements more quickly in the event of any changes to a country's pest or disease status or as a result of new scientific information or treatment options. One example of this adaptability may be found in a notice entitled "Importation of Garlic From the European Union and Other Countries Into the Continental United States," which was published in the **Federal Register** on March 21, 2011 (76 FR 15279–15280, Docket No. APHIS–2011–0015). Prior to the publication of that notice, the importation of garlic from these countries was approved only if consignments were first treated using vacuum fumigation with methyl bromide. Based on the conclusions of a commodity import evaluation document, we were able to determine that application of one or more of the designated phytosanitary measures would sufficiently mitigate the pest risk and that the use of methyl bromide was no longer necessary. Under the notice-based approach, APHIS was able to address this issue within 5 months, while, on average, it takes us 18 months using the traditional rulemaking process.

Both the fruits and vegetables regulations and the Hawaii and territories regulations continue to list certain fruits and vegetables for which additional phytosanitary measures are needed beyond one or more of those designated phytosanitary measures cited in the regulations. Additional phytosanitary measures may include requirements such as limitations on the distribution of the fruits and vegetables and box marking of fruit or vegetable consignments. Certain other fruits and vegetables must meet combinations of requirements (in some cases, called "systems approaches") to be eligible for importation into or interstate movement within the United States. Such measures include sampling regimens, pest surveys, packing requirements, and other measures determined to be necessary to mitigate the pest risk posed by the particular fruit or vegetable. These fruits or vegetables and their importation or interstate movement requirements are listed in §§ 319.56–20 through 319.56–70 of the fruits and vegetables regulations and §§ 318.13–20 through 318.13–26 of the Hawaii and territories regulations, respectively.

These commodity-specific requirements are similar to the designated phytosanitary measures of the fruits and vegetables regulations and the Hawaii and territories regulations in that both the requirements listed in the regulations and those imposed through the notice-based process are established by APHIS using the same rigorous science- and risk-based approach, which begins with the development of the pest risk analysis.

Current Processes

Using our current process for authorizing importation of fruits or vegetables under the fruits and vegetables regulations or interstate movement under the Hawaii and territories regulations, when APHIS receives a request from a country's NPPO or a State department of agriculture to allow importation or interstate movement of a fruit or vegetable whose importation or interstate movement is currently not authorized, that NPPO or State department of agriculture must first gather and submit information to APHIS concerning that fruit or vegetable. In the case of imports, a description of the required information is contained in 7 CFR 319.5(d). This information, in addition to our own research, allows APHIS to conduct a pest risk analysis.

The pest risk analysis usually contains two main components: (1) A pest risk assessment, pest list, or other pest risk document to determine what pests of quarantine significance are associated with the proposed fruit or vegetable and which of those are likely to follow the import or interstate movement pathway, and (2) a risk management document, to identify phytosanitary measures that could be applied to the fruit or vegetable and evaluate the potential effectiveness of those measures. When the pest risk assessment is complete, if quarantine pests are associated with the fruit or vegetable in the country, State, or other

region of origin,[2] APHIS then evaluates whether the risk posed by each quarantine pest can be mitigated by one or more of the designated phytosanitary measures of the fruits and vegetables regulations or the designated phytosanitary measures of the Hawaii and territories regulations. If the designated phytosanitary measures alone are not sufficient to mitigate the risk posed by the importation or interstate movement of the commodity, any further action on approving the fruit or vegetable for importation or interstate movement is undertaken using the rulemaking process, which entails publishing a proposed and final rule. The pest risk analysis is made available to the public for review and comment at the time of the publication of the proposed rule.

However, if APHIS determines in a risk management document that the risk posed by each identified quarantine pest associated with the fruit or vegetable in the country, State, or other region of origin can be mitigated by one or more of the designated phytosanitary requirements, the findings are communicated using the notice-based process; APHIS publishes in the **Federal Register**, a notice announcing the availability of the pest risk analysis for a minimum of 60 days public comment. Each pest risk analysis made available for public comment through a notice specifies which of the designated phytosanitary measures APHIS would require to be applied.

Under the notice-based process, APHIS evaluates comments received in response to the notice of availability of the pest risk analysis. In the event that APHIS receives no comments, or in the event that commenters do not provide APHIS with analysis or data that indicate that the conclusions of the pest risk analysis are incorrect and that changes to the pest risk analysis are necessary, APHIS then publishes another notice in the **Federal Register** announcing that the Administrator has determined that, based on the information available, the application of one or more of the designated phytosanitary measures (as specified in a given pest risk analysis) is sufficient to mitigate the risk that quarantine pests could be introduced or disseminated within the United States via the importation or interstate movement of the fruit or vegetable. APHIS then authorizes the importation or interstate movement of the particular fruit or vegetable, subject to the conditions described in the pest risk analysis, on the date specified in the **Federal Register** notice.

In the event that commenters provide APHIS with information that shows that changes to the pest risk analysis are necessary, and if the changes made affect the conclusions of the analysis (e.g., that the application of the identified phytosanitary measures will not be sufficient to mitigate the risk posed by the identified pests), APHIS proceeds as follows:

- If additional phytosanitary measures beyond the designated measures described earlier in this document are determined to be necessary to mitigate the risk posed by the particular fruit or vegetable, any further action on the fruit or vegetable follows the rulemaking process.
- If additional risk mitigation measures beyond those evaluated in the pest risk analysis are determined to be necessary, but the added measures only include one or more of the designated phytosanitary measures of the fruits and vegetables regulations or the designated phytosanitary measures of the Hawaii and territories regulations, APHIS may publish another notice announcing that the Administrator has determined that the application of one or more of the designated phytosanitary requirements will be sufficient to mitigate the risk that quarantine pests could be disseminated within the United States via the importation or interstate movement of the fruit or vegetable. The notice also explains the additional mitigation measures required for the importation or interstate movement of the fruit or vegetable to be authorized and how APHIS made its determination. APHIS then begins allowing the importation or interstate movement of the particular fruit or vegetable, subject to the conditions described in the revised pest risk analysis, beginning on the date specified in the **Federal Register** notice. Alternatively, if APHIS believes that the revisions to the pest risk analysis are substantial, and there may be continued uncertainty as to whether the designated measures are sufficient to mitigate the risk posed by the fruit or vegetable, APHIS may elect to make the revised pest risk analysis available for public comment via a notice in the **Federal Register**, or may make any further action on approving the commodity for importation subject to rulemaking.

When commodities are approved for importation or interstate movement, either through rulemaking or the notice-based process, all permits issued list the commodity-specific importation requirements as determined by the pest risk analyses. Those requirements are also listed in FAVIR, in the case of imported fruits and vegetables, as well as the appropriate fruits and vegetables manual, in the case of both fruits and vegetables that are imported and those that are moved interstate from Hawaii and the U.S. territories. In order to ensure producer compliance with the listed procedures, an APHIS inspector or an official authorized by APHIS monitors any treatments (e.g., cold treatment, fumigation, irradiation) that are required. Upon arrival, consignments are inspected to ensure compliance with any particular shipping requirements, such as arrangement of fruits or vegetables on pallets or pest-exclusionary packaging, as well as for the presence of any pests of concern. In the event that a pest is discovered upon inspection at the port of first arrival APHIS works with the inspectors and, in the case of imports, the NPPO of the exporting country, in order to investigate and, if necessary, re-evaluate shipments of the fruit or vegetable in question from that country or State.

Proposed Revisions

The 2007 final rule concerning imports and the 2009 final rule concerning interstate movement from Hawaii and the territories streamlined the authorization process for those fruits or vegetables whose phytosanitary requirements consisted of measures that were used most frequently. The notice-based processes established by those rules are as transparent and accessible to our stakeholders and other interested parties as the rulemaking process, while providing APHIS with the ability to make more responsive decisions on import issues and by reducing the time involved in approving the commodity for importation or interstate movement. For a number of reasons, which are explained below, we are proposing to expand the use of the notice-based process to all decisions related to the importation and interstate movement of new fruits and vegetables. We are also proposing to remove the remaining region- or commodity-specific phytosanitary requirements currently found in §§ 319.56–20 through 319.56–70, 318.13–16, and 318.13–20 through 318.13–26. As stated previously, those requirements would continue to be listed in FAVIR.

Under this proposal, the unique requirements currently found in §§ 319.56–20 through 319.56–70 would be replaced by the designated phytosanitary measures listed in § 319.56–4(b) of the regulations.

[2] Pest risk assessments can consider a country, part of a country, all or parts of several countries, a State or territory, part of a State or territory, or all or parts of several States or territories.

Similarly, we would remove the specific requirements in §§ 318.13–20 through 318.13–26 and replace them with the designated phytosanitary measures listed in § 318.13–4(b) of the regulations. We are also proposing to expand the categories of designated phytosanitary measures from those measures listed previously, which would be found in new § 319.56–4(b)(1) through 319.56–4(b)(5) and 318.13–4(b)(1) through 318.13–4(b)(5) of the regulations. These measures would stipulate that fruits and vegetables may be imported or moved from Hawaii and the territories subject to one or more of the following:

- Phytosanitary treatments, which could include, but are not limited to, pest control treatments in the field or growing site, and post-harvest treatments;
- Growing area pest mitigations, which could include, but are not limited to detection surveys, trapping requirements, pest exclusionary structures, and field inspections;
- Safeguarding and movement mitigations, which could include, but are not limited to, safeguarded transport, box labeling, limited distribution, insect-proof boxes, and importation as commercial consignments only;
- Administrative mitigations, which could include, but are not limited to, registered fields or orchards, registered growing sites, registered packinghouses, inspection in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and operational workplan monitoring; and
- Any other measures that the Administrator determines are appropriate.

We are also proposing that, in the event that the Administrator determines that the phytosanitary measures required for a fruit or vegetable that has been previously authorized for importation are no longer sufficient to mitigate the pest risk posed by the fruit or vegetable, and the Administrator must take emergency action to protect U.S. agriculture, we will prohibit or further restrict importation of the fruit or vegetable in accordance with our existing standard emergency procedures and importation restriction at the port of entry. We would also publish a notice in the **Federal Register** advising the public of our findings, specifying any amended import requirements, providing an effective date for the change, and inviting public comment on the subject. In the event that the Administrator determines that any of the phytosanitary measures required for a fruit or vegetable that has been previously authorized for importation are no longer necessary to mitigate pest risk, we would make pest risk documentation available for comment prior to issuing any revised permits. The procedures for adding or removing measures would be the same regardless of whether or not the fruit or vegetable in question was approved prior to the implementation of the proposed process.

Using a notice-based process provides several advantages over codifying import requirements in the regulations. The plant health import regulatory system is based on a highly complex and evolving body of scientific information. For example, a single approved commodity may require several mitigations to address the risk posed by one pest or may require one mitigation to address several pests. Some imported fruits and vegetables are subject to a dozen or more distinct conditions of entry, and even a minor change to one of those conditions requires rulemaking if those conditions are listed in our regulations. New information about pests that affect imports is constantly becoming available, and changes must therefore be made frequently to existing import protocols. Listing requirements in the regulations can impede timely and effective decisionmaking, and in some cases, has costs to the regulated public. For example, new information recently became available which led APHIS to conclude that Hass avocados, under certain conditions, are not a host for Mediterranean fruit fly (Medfly), as was previously believed. The regulations for importing Hass avocados from countries where Medfly is present had previously required a treatment, which APHIS concluded was no longer necessary. Similarly, the interstate movement of avocados from areas quarantined for Medfly was also prohibited unless the avocados were treated.[3] To relieve these restrictions, which were codified in our regulations, rulemaking was required. Having import requirements codified in the regulations prevents us from quickly and transparently updating import requirements if a pest expands its distribution to a country, territory, or area approved to export hosts of that pest that was not previously regulated for that pest, or when APHIS needs to eliminate import restrictions pertaining to a given pest because, for example, the pest now exists in the United States and is not under official control. We believe that such revisions can and should be made more efficiently and effectively, with equivalent transparency and public engagement and with the same scientific rigor.

Many of our domestic program regulations are designed and effectively administered to provide the flexibility to adjust promptly to changing phytosanitary information. For example, under the regulations concerning emerald ash borer (EAB), which may be found in 7 CFR 301.53–1 through 301.53–9, regulated articles may move interstate from quarantined areas if certain performance-based criteria are met. Specifically, the EAB regulations in § 301.53–5 allow articles regulated for EAB to move interstate if they are certified by an inspector or person operating under a compliance agreement to have been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB. The precise requirements for interstate movement of various types of articles are not listed in the regulations, but rather are spelled out in the associated compliance agreements. We believe the EAB regulations provide an effective regulatory process.

Using a notice-based approach allows for prompt communication with the public as well as reduced administrative burden, while carrying out the same rigorous risk analysis process we use to support decisions made via rulemaking. The notice-based process also allows us to enforce phytosanitary requirements in permits in the same manner as is used to enforce requirements codified in the regulations.

The process for developing pest risk assessments and determining mitigation measures (as detailed above under the heading "Current Processes") would remain the same, giving the public opportunity to review, evaluate, and comment. In addition, in order to further engage the public in the decisionmaking process, as well as to increase the transparency of our regulatory approach, PPQ has established a process that makes the draft risk assessments or pest lists available for review by stakeholders upon their completion and prior to being made available formally through a **Federal Register** notice. PPQ also maintains a Stakeholder Registry on the Internet[4] that allows anyone to register

[3] To view the rule go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0127.*

[4] You may sign up for PPQ's Stakeholder Registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new.*

to receive information on a specified area of interest.

As indicated earlier, if this proposed process is adopted for use by APHIS, we would remove all commodity-specific requirements from both the fruits and vegetables regulations and the Hawaii and territories regulations. Fruits or vegetables approved for import under this approach would be listed in FAVIR, which is available on the APHIS Web site, as well as in PPQ's Fresh Fruits and Vegetables Import Manual, which is available for viewing and download on APHIS's Web site.[5] Similarly, approved fruits and vegetables from Hawaii and the territories and their corresponding movement requirements would be listed in APHIS's Hawaii and Puerto Rico/U.S. Virgin Islands fruits and vegetables manuals,[6] which are available for download on APHIS's Web site.[7] Fruits or vegetables approved prior to the institution of the proposed process would continue to be allowed to be imported under the same requirements under which they were approved.

Definitions

As a result of the changes we are proposing to the Hawaii and territories regulations and the fruits and vegetables regulations, a number of the definitions currently found in §§ 318.13–2 and 319.56–2 would no longer be necessary because the terms would no longer be used in the regulations in those subparts. We are therefore proposing to remove the definitions for *approved growing media* from the regulations in § 318.13–2 and the definitions for *above ground parts, cucurbits, field, place of production, production site,* and *West Indies* from the regulations in § 319.56–2.

Frozen Fruits and Vegetables

The regulations in § 318.13–13 concern requirements for the movement of frozen fruits and vegetables from Hawaii and the territories into or through any other territory, State, or District of the United States. We are proposing to remove the last sentence of that section because it contains a reference to the regulations in 7 CFR 305.17, which no longer exist due to a prior change to that section.

Citrus Fruit

We are also proposing to remove Subpart—Citrus Fruit from the regulations. This subpart, consisting of § 319.28, imposes specific requirements on a certain type of fruit. Given that we are proposing to remove other specific requirements from the regulations, removal of the citrus fruit subpart would be consistent with those actions. The specific requirements would continue to apply and would be listed in the FAVIR database and PPQ's Fresh Fruits and Vegetables Import Manual.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The proposed rule would benefit both APHIS in its operations and U.S. businesses and consumers. APHIS would be able to use its resources more efficiently and the public would have more timely access to many of the fruits and vegetables for which importation or movement from Hawaii and the U.S. territories has yet to be approved.

APHIS has already established a notice-based process for allowing the importation or movement from Hawaii and the U.S. territories of fruits and vegetables, subject to one or more specified phytosanitary measures. For fruits and vegetables for which the risks are not adequately mitigated by these specified measures and thereby do not qualify for the notice-based process, the rulemaking process can range from 18 months to over 3 years; using the notice-based process, the average time has been reduced to 6 to 12 months.

Consumers and businesses would benefit from the more timely access to fruits and vegetables for which entry or movement would currently require rulemaking. This benefit would be reduced to the extent that certain businesses would face increased competition for the subject fruits and vegetables sooner due to their more timely approval. APHIS has not identified other costs that may be incurred because of the proposed rule. The rule would not alter the manner in which the risks associated with a fruit or vegetable import or interstate movement request are evaluated and mitigated.

The proposed rule is expected to result in more efficient use of APHIS resources and more timely approval for importation or interstate movement of fruits and vegetables from Hawaii and the U.S. territories. Principal industries that could be affected by the proposed rule, which are fruit and vegetable farms and fruit and vegetable importers, are largely composed of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[5] The PPQ Fresh Fruits and Vegetables Import Manual may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf.*

[6] Currently, APHIS does not maintain fruits and vegetables manuals for Commonwealth of the Northern Mariana Islands (CNMI) and Guam because there are no regulated articles being moved from those areas. If it becomes necessary to maintain a list of fruits and vegetables from CNMI or Guam, APHIS would list such information on its Web site at *http://www.aphis.usdo.gov/import_export/plants/manuals/online_manuals.shtml.*

[7] The Puerto Rico and the U.S. Virgin Islands fruits and vegetables manual may be found on the Internet at *http://www.aphis.usdo.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf.* The Hawaii fruits and vegetables manual may be found on the Internet at *http://www.aphis.usdo.gov/import_export/plants/manuals/ports/downloads/hawaii.pdf.*

National Environmental Policy Act

The majority of the regulatory changes in this document are nonsubstantive, and would therefore have no effects on the environment. However, this rule will allow APHIS to approve certain new fruits and vegetables for importation into the United States without undertaking rulemaking. Despite the fact that those fruits and vegetable imports will no longer be contingent on the completion of rulemaking, the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) will still apply. As such, for each additional fruit or vegetable approved for importation, APHIS will make available to the public documentation related to our analysis of the potential environmental effects of such new imports. This documentation will likely be made available at the same time and via the same **Federal Register** notice as the risk analysis for the proposed new import.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 318 and 319 as follows:

PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

■ 1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

§ 318.13–2 [Amended]

■ 2. Section 318.13–2 is amended by removing the definition for *Approved growing media.*

■ 3. Section 318.13–4 is revised to read as follows:

§ 318.13–4 Authorization of certain fruits and vegetables for interstate movement.

(a) *Determination by the Administrator.* No fruit or vegetable is authorized for interstate movement from Hawaii or the territories unless the Administrator has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be mitigated by the application of one or more phytosanitary measures designated by the Administrator.

(b) *Designated phytosanitary measures.* (1) The fruits and vegetables are subject to phytosanitary treatments, which could include, but are not limited to, pest control treatments in the field or growing site, and post-harvest treatments.

(2) The fruits and vegetables are subject to growing area pest mitigations, which could include, but are not limited to, detection surveys, trapping requirements, pest exclusionary structures, and field inspections.

(3) The fruits and vegetables are subject to safeguarding and movement mitigations, which could include, but are not limited to, safeguarded transport, box labeling, limited distribution, insect-proof boxes, and importation as commercial consignments only.

(4) The fruits and vegetables are subject to administrative mitigations, which could include, but are not limited to, registered fields or orchards, registered growing sites, registered packinghouses, inspection in the State of origin by an inspector, and operational workplan monitoring.

(5) The fruits and vegetables are subject to any other measures deemed appropriate by the Administrator.

(c) *Authorized fruits and vegetables.* (1) *Comprehensive list.* The name and origin of all fruits and vegetables authorized for interstate movement under this section, as well as the applicable requirements for their movement, may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/index.shtml.*

(2) *Fruits and vegetables authorized for interstate movement prior to [EFFECTIVE DATE OF FINAL RULE].* Fruits and vegetables that were authorized for interstate movement under this subpart as of [*EFFECTIVE DATE OF FINAL RULE*] may continue to be moved interstate under the same requirements that applied before [*EFFECTIVE DATE OF FINAL RULE*], except as provided in paragraph (c)(4) of this section.

(3) *Other fruits and vegetables.* Fruits and vegetables not already authorized for interstate movement as described in paragraph (c)(2) of this section may be authorized for interstate movement only after:

(i) *Pest risk analysis and mitigations.* APHIS has analyzed the pest risk posed by the interstate movement of a fruit or vegetable and has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be mitigated by the application of one or more phytosanitary measures.

(ii) *Opportunity for public comment.* APHIS has made its pest risk analysis and determination available for public comment for at least 60 days through a notice published in the **Federal Register**.

(iii) *Administrator's decision.* The Administrator has announced his or her decision in a subsequent **Federal Register** notice to begin allowing interstate movement of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(4) *Changes to phytosanitary measures.* (i) If the Administrator determines that the phytosanitary measures required for a fruit or vegetable that has been authorized interstate movement under this subpart are no longer sufficient to mitigate the pest risk posed by the fruit or vegetable, APHIS will prohibit or further restrict interstate movement of the fruit or vegetable. APHIS will also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended interstate movement requirements, provide an effective date for the change, and invite public comment on the subject.

(ii) If the Administrator determines that any of the phytosanitary measures required for a fruit or vegetable that has been authorized interstate movement under this subpart are no longer necessary to mitigate the pest risk posed by the fruit or vegetable, APHIS will make new pest risk documentation available for public comment, in accordance with paragraph (c)(3) of this section, prior to allowing interstate movement of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(Approved by the Office of Management and Budget under control number 0579–0346)

§ 318.13–13 [Amended]

■ 4. Section 318.13–13 is amended by removing the last sentence.

§ 318.13–16 [Removed]

■ 5. Section 318.13–16 is removed.

§ 318.13–17 [Redesignated as § 318.13–16]

■ 6. Section 318.13–17 is redesignated as § 318.13–16.

§ 318.13–16 [Amended]

■ 7. In newly redesignated § 318.13–16, paragraph (a)(1) is amended by

removing the word "under" and adding the words "in accordance with" in its place.

§§ 318.13–18 through 318.13–22 [Removed]

■ 8. Sections 318.13–18 through 318.13–22 are removed.

§ 318.13–23 [Redesignated as § 318.13–17]

■ 9. Section 318.13–23 is redesignated as § 318.13–17.

§§ 318.13–24 through 318.13–26 [Removed]

■ 10. Sections 318.13–24 through 318.13–26 are removed.

PART 319—FOREIGN QUARANTINE NOTICES

■ 11. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Subpart—CITRUS FRUIT [Removed]

■ 12. Subpart—CITRUS FRUIT is removed.

§ 319.56–2 [Amended]

■ 13. Section 319.56–2 is amended by removing the definitions for *Above ground parts, Cucurbits, Field, Place of production, Production site,* and *West Indies.*

■ 14. Section 319.56–4 is revised to read as follows:

§ 319.56–4 Authorization of certain fruits and vegetables for importation.

(a) *Determination by the Administrator.* No fruit or vegetable is authorized importation into the United States unless the Administrator has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be mitigated by the application of one or more phytosanitary measures designated by the Administrator and the fruit or vegetable is imported into the United States in accordance with, and as stipulated in, the permit issued by the Administrator.

(b) *Designated phytosanitary measures.* (1) The fruits and vegetables are subject to phytosanitary treatments, which could include, but are not limited to, pest control treatments in the field or growing site, and post-harvest treatments.

(2) The fruits and vegetables are subject to growing area pest mitigations, which could include, but are not limited to detection surveys, trapping requirements, pest exclusionary structures, and field inspections.

(3) The fruits and vegetables are subject to safeguarding and movement mitigations, which could include, but are not limited to, safeguarded transport, box labeling, limited distribution, insect-proof boxes, and importation as commercial consignments only.

(4) The fruits and vegetables are subject to administrative mitigations, which could include, but are not limited to, registered fields or orchards, registered growing sites, registered packinghouses, inspection in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and operational workplan monitoring.

(5) The fruits and vegetables are subject to any other measures deemed appropriate by the Administrator.

(c) *Authorized fruits and vegetables.* (1) *Comprehensive list.* The name and origin of all fruits and vegetables authorized importation under this section, as well as the applicable requirements for their importation, may be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf* or *http://www.aphis.usda.gov/favir.*

(2) *Fruits and vegetables authorized importation prior to [EFFECTIVE DATE OF FINAL RULE].* Fruits and vegetables that were authorized importation under this subpart either directly by permit or by specific regulation as of [EFFECTIVE DATE OF FINAL RULE] may continue to be imported into the United States under the same requirements that applied before [EFFECTIVE DATE OF FINAL RULE], except as provided in paragraph (c)(4) of this section.

(3) *Other fruits and vegetables.* Fruits and vegetables not already authorized for importation as described in paragraph (c)(2) of this section may be authorized importation only after:

(i) *Pest risk analysis and mitigations.* APHIS has analyzed the pest risk posed by the importation of a fruit or vegetable from a specified foreign region and has determined that the risk posed by each quarantine pest associated with the fruit or vegetable can be mitigated by the application of one or more phytosanitary measures.

(ii) *Opportunity for public comment.* APHIS has made its pest risk analysis and determination available for public comment for at least 60 days through a notice published in the **Federal Register.**

(iii) *Import authorization.* The Administrator has announced his or her decision in a subsequent **Federal Register** notice to authorize the importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(4) *Changes to phytosanitary measures.* (i) If the Administrator determines that the phytosanitary measures required for a fruit or vegetable that has been authorized importation under this subpart are no longer sufficient to mitigate the pest risk posed by the fruit or vegetable, APHIS will prohibit or further restrict importation of the fruit or vegetable. APHIS will also publish a notice in the **Federal Register** advising the public of its finding. The notice will specify the amended importation requirements, provide an effective date for the change, and will invite public comment on the subject.

(ii) If the Administrator determines that any of the phytosanitary measures required for a fruit or vegetable that has been authorized importation under this subpart are no longer necessary to mitigate the pest risk posed by the fruit or vegetable, APHIS will make new pest risk documentation available for public comment, in accordance with paragraph (c)(3) of this section, prior to allowing importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice.

(Approved by the Office of Management and Budget under control number 0579–0293)

§§ 319.56–13 through 319.56–69 [Removed]

■ 15. Sections 319.56–13 through 319.56–69 are removed.

§ 319.56–70 [Removed]

■ 16. § 319.56–70, as added at 79 FR 52543, September 4, 2014, and effective October 6, 2014, is removed.

Done in Washington, DC, this 2nd day of September 2014.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2014–21406 Filed 9–8–14; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0120]

RIN 3150–AJ42

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Underground Maximum Capacity Canister Storage System, Certificate of Compliance No. 1040

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by adding the Holtec International HI–STORM Underground Maximum Capacity (UMAX) Canister Storage System, Certificate of Compliance (CoC) No. 1040, to the "List of approved spent fuel storage casks." Holtec International intends to provide an underground storage option compatible with the Holtec International HI–STORM FLOOD/WIND System (CoC No. 1032). The Holtec International HI–STORM UMAX Canister Storage System stores a hermetically sealed canister containing spent nuclear fuel in an in-ground vertical ventilated module. The Holtec International HI–STORM UMAX Canister Storage System is designed to provide long-term underground storage of loaded multi-purpose canisters previously certified for storage in CoC No. 1032.

DATES: Submit comments by October 9, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0120. Address questions about NRC dockets to Carol Gallagher, telephone: 301–287–3422, email: *Carol.Gallagher@nrc.gov*. For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0120 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0120.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection 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*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2014–0120 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to the addition of CoC No. 1040 to the "List of approved spent fuel storage casks." Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on November 24, 2014 However, if the NRC receives significant adverse comments on this proposed rule by October 9, 2014, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or (c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial)

to the rule, CoC, or Technical Specifications.

For additional procedural information, including the regulatory analysis and the environmental assessment and finding of no significant impact, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that "the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks," which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
CoC No. 1040	ML14122A443
Safety Evaluation Report	ML14122A441
Technical Specifications, Appendix A	ML14122A444
Technical Specifications, Appendix B	ML14122A442
Application	ML12363A282
Application supplemental July 16, 2012	ML12205A134
Application Supplemental November 20, 2012	ML12348A483
Application supplemental January 30, 2013	ML13032A008
Application supplemental April 2, 2013	ML13107B249
Application supplemental April 19, 2013	ML13114A191
Application supplemental June 21, 2013	ML13175A363
Application supplemental August 28, 2013	ML13261A062
Application Supplemental December 6, 2013	ML13343A169
Application supplemental December 31, 2013	ML14002A402
Application supplemental January 13, 2014	ML14015A145
Application supplemental January 28, 2014	ML14030A055

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0120. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0120); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Protection Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704 (112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c)–(d) (42 U.S.C. 10162(b), 10168(c)-(d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1040 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1040.

Initial Certificate Effective Date: November 24, 2014.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the Holtec International HI–STORM UMAX Canister Storage System.

Docket Number: 72–1040.

Certificate Expiration Date: September 9, 2034.

Model Number: MPC–37, MPC–89.

Dated at Rockville, Maryland, this 22nd day of August, 2014.

For the Nuclear Regulatory Commission.

Darren B. Ash,

Acting Executive Director for Operations.

[FR Doc. 2014–21419 Filed 9–8–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 1206013202–4700–01]

RIN 0691–AA83

Direct Investment Surveys: BE–10, Survey of U.S. Direct Investment Abroad; Correction

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects the Regulation Identifier Number (RIN) in a proposed rule published in the **Federal Register** on Thursday, August 14, 2014, to amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to reinstate reporting requirements for the 2014 BE–10, Benchmark Survey of U.S. Direct Investment Abroad. Benchmark surveys are conducted every five years; the prior survey covered 2009.

DATES: Comments on the proposed rule will receive consideration if submitted in writing on or before 5:00 p.m., October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Abaroa, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9591.

SUPPLEMENTARY INFORMATION: On Thursday, August 14, 2014, BEA published a Notice of Proposed Rulemaking reinstating reporting requirements for the 2014 BE–10, Benchmark Survey of U.S. Direct Investment Abroad. That rule incorrectly identified the RIN as 0691–XC026. The correct RIN for the action is 0691–AA83.

Correction

Accordingly, in proposed rule FR Doc. 2014–18629, beginning on page 47599 in the issue of Thursday, August 14, 2014 (79 FR 47599), the RIN in the heading of the document is revised to read 0691–AA83.

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR 1981 Comp., p. 173); and E.O. 12518 (3 CFR 1985 Comp., p. 348).

Dated: August 25, 2014.

Brian C. Moyer,

Acting Director, Bureau of Economic Analysis.

[FR Doc. 2014–21330 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0096; FRL–9916–31–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revision to Control Volatile Organic Compound Emissions from Storage Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a Texas State Implementation (SIP) revision for control of volatile organic compound (VOC) emissions from storage tanks. The revision implements additional controls in the Dallas-Fort Worth 1997 ozone nonattainment area (DFW area); modifies control requirements in the DFW area, the Houston-Galveston-Brazoria ozone nonattainment area (HGB area), the Beaumont-Port Arthur area and El Paso, Gregg, Nueces and Victoria Counties; and makes non-substantive changes to VOC control provisions that apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio and Travis Counties. In addition, EPA is proposing to find that the SIP revision implements serious area reasonable available control technology (RACT) controls for the VOC storage source category in the DFW area and continues to implement severe area RACT for this source category in the HGB area as required by the Clean Air Act.

DATES: Written comments should be received on or before October 9, 2014.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl Young, (214) 665–6645, *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 22, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2014–21305 Filed 9–8–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 12–269 and GN Docket No. 12–268; Report No. 3009]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding, by Charles W. Logan, Lawler, Metzger, Keeney & Logan, LLC, on behalf of Sprint Corporation, and by Trey Hanbury, Hogan Lovells US, LLP, on behalf of T-Mobile USA, Inc.

DATES: Oppositions to the Petitions must be filed on or before September 24, 2014. Replies to an opposition must be filed on or before October 6, 2014.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amy Brett, Wireless Telecommunications Bureau, (202) 418–2703, email: *Amy.Brett@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3009, released August 21, 2014. The full text of Report No. 3009 is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A) because this notice does not have an impact on any rules of particular applicability.

Subject: Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, published at 79 FR 39977, July 11, 2014, in WT Docket No. 12–269 and GN Docket No. 12–268 and published pursuant to 47 CFR 1.429(e). *See also* § 1.4(b)(1) of the Commission's rules.

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–21372 Filed 9–8–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[Docket No. FRA–2014–0032, Notice No. 1]

RIN 2130–AC47

Securement of Unattended Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes amendments to the brake system safety standards for freight and other non-passenger trains and equipment to strengthen the requirements relating to the securement of unattended equipment. Specifically, FRA would codify many of the requirements already included in its Emergency Order 28, Establishing Additional Requirements for Attendance and Securement of Certain Freight Trains and Vehicles on Mainline Track or Mainline Siding Outside of a Yard or Terminal. FRA proposes to amend existing regulations to include additional securement requirements for unattended equipment, primarily for trains transporting poisonous by inhalation hazardous materials or large volumes of Division 2.1 (flammable gases), Class 3 (flammable or combustible liquids, including crude oil and ethanol), and Class 1.1 or 1.2 (explosives) hazardous materials. For these trains, FRA also proposes additional communication requirements relating to job briefings and securement verification. Finally, FRA proposes to require all locomotives left unattended outside of a yard to be equipped with an operative exterior locking mechanism. Attendance on trains would be required on equipment not capable of being secured in accordance with the proposed and existing requirements.

DATES: (1) Written comments must be received by November 10, 2014. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays. (2) FRA anticipates being able to resolve this rulemaking without a public hearing. However, if prior to October 9, 2014, FRA receives a specific request for a public hearing, a hearing will be scheduled and FRA will publish a supplemental document in the **Federal Register** to inform interested parties of the date, time, and location of such hearing.

ADDRESSES: *Comments:* Comments related to this proceeding may be submitted by any of the following methods:

- *Web site:* Comments should be filed at the Federal eRulemaking Portal, *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., Room W12–140, Washington, DC 20590.
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Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the "Supplementary Information" section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Steven Zuiderveen, Railroad Safety Specialist, Motive & Power Equipment Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, RRS–14, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6337); Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Purpose of the Proposed Regulatory Action

While FRA's existing securement regulations have been successful in mitigating risks associated with the rolling of unattended equipment, FRA recognizes that—particularly in light of certain accidents like the one last year in Lac-Mégantic, Quebec, Canada—additional requirements may be warranted when such equipment includes certain hazardous materials that can contribute to high-consequence events. To address these concerns, FRA issued Emergency Order 28, 78 FR 48218 (Aug. 7, 2013), engaged in proceedings with the Railroad Safety Advisory Committee to draft recommended regulations, and is issuing this responsive notice of proposed rulemaking (NPRM). FRA is proposing this rulemaking pursuant to the authority granted to the Secretary of Transportation in 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–20302, 21304; 28 U.S.C. 2461, note; which the Secretary has delegated to the Administrator of FRA pursuant to 49 CFR 1.89.

Summary of the Major Provisions of the Proposed Regulatory Action

In this proceeding, FRA proposes requirements to ensure that each locomotive left unattended outside of a yard be equipped with an operative exterior locking mechanism and that such locks be applied on the controlling locomotive cab door when a train is transporting tank cars loaded with certain hazardous materials. This proposed rule would provide that such hazardous materials trains may only be left unattended on a main track or siding if justified in a plan adopted by the railroad, accompanied by an appropriate job briefing, and proper securement is made and verified. This proposed rule would also require additional verification of securement in the event that a non-railroad emergency responder may have been in a position to have affected the equipment.

Costs and Benefits of the Proposed Regulatory Action

In this rule, the benefits ($1,163,669 at a 7% discount, $1,579,240 at a 3% discount) outweigh the costs ($86,685 at a 7% discount, $99,909 at a 3% discount), with total net benefits over 20 years of $1,076,984 at a 7% discount (or $95,009 annualized) and $1,478,331 at a 3% discount (or $96,538 annualized).

Discounted values	Discounted value	
	Discount factor	
	7%	3%
Costs:		
Attending Trains	$36,685	$49,909
Installing Locks	50,000	50,000
Total Costs	86,685	99,909
Benefits:		
Reduced Vandalism	180,873	250,666
Reduced Recordkeeping	982,786	1,328,573
Total Benefits	$1,163,669	$1,579,240

Discounted values net benefits	Discounted value	
	Discount factor	
	7%	3%
Total	$1,076,984	$1,479,331
Annualized	95,009	96,538

II. Background

In 2001, FRA issued regulations governing the securement of unattended equipment. 66 FR 4104 (Jan. 17, 2001). These regulations have been effective in protecting against the risk of rolling equipment. Over the last few years, there has been a significant increase in the volume of rail traffic for certain types of commodities, such as petroleum crude oil (crude oil) and ethanol, both of which are highly flammable and often transported in large unit or "key" trains, as defined in the industry by the Association of American Railroads (AAR). *See* AAR Circular No. OT–55–N (Aug. 5, 2013), *available at http://www.boe.aar.com/CPC-1258%20OT-55-N%208-5-13.pdf.*

Since 2009, there have been a number of serious rail accidents involving the transportation of large quantities of flammable liquids. A number of these accidents involved trains transporting large quantities of ethanol. However, since 2011, there has been significant growth in the rail transport of flammable crude oil, and FRA has seen a number of accident-related releases of crude oil in that time. One significant accident involving tank cars loaded with crude oil was July 6, 2013, derailment in the town of Lac-Mégantic, Quebec, Canada. After reviewing the facts related to this derailment, FRA concluded that additional action was necessary to eliminate an immediate hazard of death, personal injury, or significant harm to the environment, particularly in instances where certain hazardous materials are involved. Thus about a year ago FRA issued Emergency Order 28 requiring railroads to implement additional procedures to ensure the proper securement of equipment containing certain types and amounts of hazardous materials when left unattended. Subsequent to the

issuance of Emergency Order 28, FRA also enlisted the assistance of the Railroad Safety Advisory Committee (RSAC) to develop recommendations regarding the attendance and securement of railroad equipment transporting certain hazardous materials when left unattended in light of the requirements contained in Emergency Order 28.

A. Lac-Mégantic Derailment

1. Facts

On July 6, 2013, in the town of Lac-Mégantic, Quebec, Canada, an accident involving tank cars loaded with petroleum crude oil occurred on track owned by Montreal, Maine & Atlantic Railway Corporation (MMA), a company incorporated in the United States.

According to a report issued by the Transportation Safety Board (TSB) of Canada, the incident is summarized as follows.[1] On July 5, 2013, a locomotive engineer was operating freight train MMA–002 on the Sherbrooke Subdivision from Farnham (milepost 125.60) and at around 10:50 p.m. stopped near Nantes, Quebec (milepost 7.40) on its way to its destination, Brownville Junction, Maine. The train was approximately 4,700 feet long, weighed over 10,000 tons, and included a locomotive consist of 5 head-end locomotives and one VB car, 1 box car (buffer car), and 72 tank cars loaded with approximately 7.7 million liters of petroleum crude oil (UN 1267). The locomotive engineer parked train MMA–002 on the main line, on a descending grade of 1.2%, attempted to secure the train, and departed, leaving the train unattended. At around 11:40 p.m., a local resident reported a fire on the train. The local fire department was called and responded with another MMA employee. At approximately midnight, the controlling locomotive was shut down and the fire extinguished. After the fire was extinguished, the fire department and the MMA employee left the site.

At approximately 1:00 a.m. the next day (the early morning of July 6th), the train began rolling and picking up speed down the descending grade toward the town of Lac-Mégantic, Quebec, located 7.2 miles away and approximately 30 miles from the United States-Canada border. At about 1:15 a.m., near the center of town, the train derailed. The locomotive consist, which separated from the train, did not derail and traveled an additional ½ mile before stopping.

The derailment caused a release of 6 million liters of petroleum crude oil, resulting in a large fire with multiple explosions. At this time, it is estimated that there were 47 fatalities.[2] There was also extensive damage to the town, and approximately 2,000 people were evacuated from the surrounding area.

2. Response

In response to this accident, Transport Canada—the Canadian government department responsible for regulating transportation safety in Canada—issued an emergency railroad directive on July 23, 2013.[3] While Transport Canada explained in the emergency directive that the cause of the accident in Lac-Mégantic remained unknown, the emergency directive stated that, "in light of the catastrophic results of the Lac-Mégantic accident and in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need to clarify the regime respecting unattended locomotives on main track and sidings and the transportation of dangerous goods in tank cars using a one person crew to address any threat to the safety and security of railway operations." As such, Transport Canada exercised its statutory emergency directive authority to order railroad companies in Canada to comply with certain requirements related to unauthorized entry into locomotive cabs, directional controls on locomotives, the application of hand brakes to cars left unattended for more than one hour, setting of the automatic brake and independent brake on any locomotive attached to cars that is left unattended for one hour or less, attendance related to locomotives attached to loaded tank cars transporting dangerous goods on main track, and the number of crew members assigned to a locomotive attached to loaded tank cars transporting dangerous goods on a main track or siding.

Also on July 23, 2013, Transport Canada issued an accompanying order pursuant to paragraph 19(a)(1) of the Canadian Railway Safety Act directing railroad companies in Canada to formulate or revise certain railroad operating rules, respecting the safety and security of unattended locomotives, uncontrolled movements, and crew size requirements.[4] The order provides that rules should be based on an assessment of safety and security risks, and shall at a minimum ensure that the cab(s) of unattended controlling locomotives are secure against unauthorized entry; ensure that the reverse levers (commonly referred to as a "reversers") of unattended locomotives are removed and secured; prevent uncontrolled movements of railway equipment by addressing the application of hand brakes; ensure the security of stationary railway equipment transporting dangerous goods; and provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors.

The Railway Association of Canada submitted proposed operating rules to Transport Canada on November 20, 2013. Transport Canada accepted the proposed rules submitted on December 26, 2013, making the operating rules applicable to all railway companies operating in Canada. *See* TC O 0–167. As a result, railroads operating in Canada are now required to comply with Canadian Rail Operating Rules (CROR) CROR 112, as amended.

CROR 62 pertains to "Unattended engines." The term "unattended" is now defined in the CROR as "when an employee is not in close enough proximity to take effective action." The new Canadian requirements, applicable to each engine left unattended outside of an attended yard or terminal, requires cab securement to prevent unauthorized entry and removal of the reverser from the engine when it does not have a high idle feature and not in sub-zero temperatures. *See* CROR 62 (TC O 0–167). Transport Canada also approved expansive revisions to CROR 112, which now provides minimum requirements, acceptable methods, and factors to consider for securing equipment while switching en route or left unattended. *See* CROR 112 (TC O 0–167).

In direct response to the Lac-Mégantic derailment, DOT began taking actions consistent with Transport Canada to ensure the safe transportation of products by rail in the United States, with a particular focus on certain hazardous materials that present an

[1] Railway Investigative Report R13D0054, TSB, July 6, 2013, *available at http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/R13D0054/R13D0054.pdf.*

[2] *See id.; see also* Statistical Summary Railway Occurrences 2013, TSB, pp. 2, 5, *available at http://www.tsb.gc.ca/eng/stats/rail/2013/ssro-2013.pdf.*

[3] *See* Emergency Directive Pursuant to Section 33 of the Railway Safety Act, Safety and Security of Locomotives in Canada, July 23, 2013, available at *http://news.gc.ca/web/article-en.do?nid=829609; see also* Rail Safety Advisor Letter—09/13, Securement of Equipment and Trains Left Unattended, Transport Canada (July 18, 2013), *available at http://www.tsb.gc.ca/eng/medias-media/sur-safe/letter/rail/2013/r13d0054/r13d0054–617–09–13.asp.*

[4] Railroads operating within Canada were at the time of the Lac-Mégantic derailment, and are currently, required to comply with the Canadian Rail Operating Rules (CROR) that have been approved by Transport Canada.

immediate danger for communities and the environment in the event of a train accident. In Emergency Order 28, FRA sought to address the immediate dangers that arise from unattended equipment that is left unsecured on mainline tracks. Emergency Order 28 remains in effect today, as amended by FRA's August 27, 2013, letter approving with conditions a joint petition for relief from the AAR and the American Short Line and Regional Railroad Association (ASLRRA). Railroads currently are required to comply with Emergency Order 28, as amended, in addition to 49 CFR 232.103(n). Emergency Order 28, as amended, contains six securement-related requirements governing when, where, and how certain hazardous materials tank cars may be left unattended, including certain communication requirements:

(1) A railroad must not leave equipment unattended on a mainline outside of a yard or terminal when the equipment includes a minimum number of loaded tank cars containing certain types of hazardous materials, referred to as "Appendix A Materials" —5 or more tank cars containing materials poisonous by inhalation (PIH), including anhydrous ammonia and ammonia solutions and/or 20 rail car loads of flammable gases or liquids (e.g., crude oil and ethanol)—until the railroad develops, adopts, and complies with a plan that identifies specific locations and circumstances when such equipment may be left unattended.[5]

(2) A railroad must develop a process for securing unattended equipment containing Appendix A Materials that includes: (a) locking the controlling locomotive cab or removing and securing the reverser and (b) communication of pertinent securement information to the dispatcher for recordation.

(3) Each railroad must review and verify, and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment.

(4) Each railroad must require a job briefing addressing securement for any job that will impact or require the securement of any equipment in the course in the course of the work being performed.

(5) Each railroad must ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended.

(6) Each railroad must provide notice to all employees affected by Emergency Order 28.

See 78 FR 48224 (Aug. 7, 2013). Following a request from AAR and ASLRRA, FRA granted partial relief from Emergency Order 28's dispatcher communication requirement in certain limited situations. FRA's relief letter provides that a railroad employee may leave equipment unattended on a mainline or siding without contacting the train dispatcher when the employee is actively engaged in switching duties as long as the employee ensures that there is an emergency application of the air brakes, hand brakes are set in accordance with 49 CFR 232.103(n), and the employee has demonstrated knowledge of FRA and railroad securement requirements. *See* Letter from Robert C. Lauby, Acting Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, to Michael J. Rush, Associate General Counsel, AAR, and Keith T. Borman, Vice President and General Counsel, ASLRRA, (Aug. 27, 2013), *available at https://rsac.fra.dot.gov/meetings/20130829.php.*

Additionally, FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) jointly issued a Safety Advisory to railroads and commodity shippers detailing eight recommended actions the industry should take to better ensure the safe transport of hazardous materials. *See* Federal Railroad Administration Safety Advisory 2013–06, Lac-Mégantic Railroad Accident and DOT Safety Recommendations, 78 FR 48224 (Aug. 7, 2013), *available at http://www.fra.dot.gov/eLib/details/L04720.* These recommendations include: Reviewing the details and lessons learned from the Lac Mégantic accident; reviewing crew staffing levels; removing and securing the train's "reverser" when unattended; review of all railroad operating procedures, testing and operating rules related to securing a train; reviewing Transport Canada's directives to secure and safely operate a train; and conducting a system-wide assessment of security risks when a train is unattended and identify mitigation efforts for those risks. Additionally, the Safety Advisory recommends testing and sampling of crude oil for proper classification for shipment, as well as a review of all shippers' safety and security plans. FRA also convened an emergency meeting of FRA's RSAC to begin the deliberative process with FRA's stakeholders, including railroad management, railroad labor, shippers, car owners, and others, as the agency considers requirements in Emergency Order 28 and recommendations in the Safety Advisory that should be made a part of its regulations.[6]

On August 19, 2014, the TSB released its Railway Investigation Report R13D0054, citing 18 causal and contributing factors, plus an additional 16 findings as to risk, concerning the accident at Lac-Mégantic. FRA believes that DOT has taken, or is already taking, action concerning each of those factors. The TSB notably included in its list of factors the MMA's weak safety culture and ineffective oversight on train securement. The report also identified factors relating directly to train securement such as insufficient hand brakes and improper hand brake test applications. This instant rulemaking proposes requirements that would enhance safety culture and oversight and that would address train securement. For instance, as further discussed below, FRA proposes to mandate by regulation the implementation of operating rules and practices requiring that securement be part of all relevant job briefings. FRA also proposes rules requiring verification with a qualified person that equipment is adequately and effectively secured in accordance with the regulations before being left unattended. These requirements aim to increase the safety dialog between railroad employees and to provide enhanced oversight within the organization. In doing so, these communications should better ensure that crew members apply the proper number of hand brakes, and more correctly apply hand brake tests, on unattended equipment. Also notable was the report's findings as to risk that states: "If trains are left unattended in easily accessible locations, with locomotive cab doors unlocked and the reverser handle available in the cab, the risk of unauthorized access, vandalism, and tampering with locomotive controls is increased." This proposed rule directly addresses this concern with requirements relating to the installation and use of locomotive door locks and reverser removal.

[5] AAR has voluntarily applied EO 28 to trains that have a single PIH tank car.

[6] The RSAC was given three tasks. In addition to developing securement recommendations, it was also tasked with developing recommendations addressing issues relating to train crew size and hazardous materials such as identification and classification of hazardous materials, operational controls, and handling of certain hazardous materials shipments. The RSAC hazardous materials working group was able to reach consensus on amending the definitions of "residue" and "key train" and clarifying the jurisdiction concerning loading, unloading, and storage of hazardous materials before and during transportation. These recommendations have been provided to PHMSA, which has regulatory authority over hazardous materials shipments.

B. Safety Concerns Arising Out of the Lac-Mégantic Derailment and Other Train Incidents Involving Flammable Liquids and Gases and Poison Inhalation Hazard Materials

The vast majority of hazardous materials shipped by rail each year arrive at their destinations safely and without incident. Indeed, in calendar year 2013, there were only 18 accidents in which a hazardous material was released (involving a total of 78 cars) out of approximately 1.6 million shipments of hazardous material transported in rail tank cars in the United States. However, the Lac-Mégantic incident demonstrates the substantial potential for danger that exists when an unattended train rolls away and derails resulting in the sudden release of hazardous materials into the environment. Although the Lac-Mégantic incident occurred in Canada, the freight railroad operating environment in Canada is similar to that in the United States, and a number of railroads operate in both countries.[7] Freight railroads in the United States also transport a substantial amount and variety of hazardous materials, including materials poisonous by inhalation (PIH materials), also known as materials toxic by inhalation (TIH), and explosive materials. Moreover, an increasing proportion of the hazardous materials transported by rail is classified as flammable.[8]

The MMA train in the Lac-Mégantic incident was transporting 72 carloads of crude oil with five locomotives and a loaded box car. A similar type of train consist is commonly found on rail lines in the United States, because crude oil is often transported in solid blocks or by a unit train consisting entirely of tank cars containing crude oil. Crude oil is often classified by an offeror as a flammable liquid; per PHMSA's Hazardous Materials Regulations (HMRs), however, its packing group can be I, II, or III depending on the blend of constituent crude oils. According to the AAR, crude oil traffic increased 68-fold in the United States between 2005 and 2013. Much of this growth has occurred because of developments in North Dakota, as the Bakken formation in the Williston Basin has become a major source for oil production in the United States. Texas also has contributed to the growth of crude oil shipments by rail. As a result, carloads of crude oil increased from approximately 81,452 in 2011 to approximately 485,384 in 2013. The Bakken crude oil from North Dakota is primarily shipped via rail to refineries located near the U.S. Gulf Coast—particularly in Texas and Louisiana—or also to pipeline connections, most notably to connections located in Oklahoma. Crude oil is also shipped via rail to refineries on the East Coast and West Coast, and to a lesser extent, refineries in other regions of the U.S.[9]

All indications from the U.S. Department of Energy's U.S. Energy Information Administration (EIA) are that rail capacity for Bakken crude oil from the Williston Basin will continue to expand to meet production.[10] Rail shipments from the North Dakota region are forecast to increase over the next two years (as are pipeline shipments). Much of the near-term growth in rail originations is a function of how quickly rail car manufacturers can meet the demand by producing new tank cars, primarily for transporting Bakken crude oil. The rise in rail originations in crude oil is subject to changes in the number of tank cars available, price of crude oil, overall production of crude oil in that region; and if, or how quickly, additional pipeline capacity from that region comes online. However, for the foreseeable future, all indications are for continued growth of rail originations of crude in that region as new tank car fleets come online to meet demand.

As demonstrated by the Lac-Mégantic derailment, in a high-consequence incident, crude oil is problematic when released because it is flammable. This risk is compounded because it is commonly shipped in large unit trains. Subsequent to the Lac-Mégantic derailment, the United States has seen at least three major rail-related incidents involving crude oil unit trains that evidence the dangerous results that can occur when crude oil is not transported safely. FRA recognizes that none of these three derailments resulted from a roll-away situation that would have been addressed by this rule.

On April 30, 2014, there was derailment near downtown Lynchburg, Virginia, of an eastbound CSX Transportation, Inc. (CSX) unit train consisting of 105 tank cars loaded with crude oil. Seventeen of the train's cars derailed. One of the tank cars was breached, leading to a crude oil fire. Emergency responders were forced to evacuate approximately 350 individuals from the immediate area. Additionally, three of the derailed tank cars came to rest in the adjacent James River, causing up to 30,000 gallons of crude oil to be spilled into the river. The National Transportation Safety Board (NTSB) and DOT are both investigating this accident to determine the cause.

On December 30, 2013, a westbound grain train derailed 13 cars near Casselton, North Dakota, fouling main track 2.[11] Simultaneously, an eastbound crude oil unit train was operating on main track 2. The crude oil unit train reduced its speed and collided with a derailed car that was fouling, resulting in the derailment of the head-end locomotives and the first 21 cars of the crude oil unit train. Eighteen of the 21 derailed tank cars ruptured, releasing an estimated 400,000 gallons of crude. The ruptured tank cars ignited causing an explosion. There were no reported injuries by either train crew, nor were there any injuries to the public; however, about 1,400 people were evacuated. Damages from the derailment are estimated at $6.1 million.[12]

Also, on November 8, 2013, a 90-car crude oil train derailed in a rural area near Aliceville, Alabama. The crude oil shipment had originated in North Dakota and was bound for Walnut Hill, Florida, to be transported by a regional pipeline to a refinery in Saraland, Alabama. More than 20 cars derailed, and at least 11 cars ignited, resulting in an explosion and fire. Although there were no reported injuries, an undetermined amount of crude oil escaped from derailed cars and fouled a wetlands area near the derailment site.

[7] As an example, MMA formerly operated in both the United States and Canada, with approximately 510 miles of track in Maine, Vermont, and Quebec, and the tank cars transporting the crude oil that derailed in Lac-Mégantic originated in the Williston Basin of North Dakota. A discussion concerning the applicable Canadian securement requirements can be found above in the section titled "2. Response," which addresses the actions taken by the United States and Canada in direct response to the Lac-Mégantic incident.

[8] PHMSA prescribes a comprehensive regulatory safety system that categorizes hazardous materials into nine hazard classes based on the type of hazards presented by the materials. *See* 49 CFR parts 172 and 173. Under PHMSA's regulations, crude oil, in most forms, meets the definition of a "Class 3" hazardous material, which signifies that it is a flammable liquid. Ethanol, discussed below, also is a Class 3 hazardous material. PIH materials, referenced above, include "Class 2 and Division 2.3" gases and "Class 6, and Division 6.1" poisons other than gases. Chlorine gas and anhydrous ammonia are two examples of PIH materials (Division 2.3) that are commonly transported by rail.

[9] *See* AAR's May 2013 paper "Moving Crude Oil by Rail", available online at: *https://www.aar.org/sofety/Documents/Assets/Transportotion_of_Crude_Oil_by_Roil.pdf.*

[10] *See* EIA reports "Bakken crude oil price differential to WTI narrows over last 14 months," available online at: *http://www.eio.gov/todayinenergy/detoil.cfm?id=10431;* and "Rail delivery of U.S. oil and petroleum products continues to increase, but pace slows," available online at: *http://www.eia.gov/todoyinenergy/detoil.cfm?id=12031.*

[11] This derailment currently is being investigated by the National Transportation Safety Board (NTSB), and information regarding this incident can be found at the NTSB Web site. *See http://www.ntsb.gov/doclib/reports/2014/Cosselton_ND_Preliminory.pdf.*

[12] *See id.*

The dangers related to crude oil trains are not necessarily unique. They also exist with other hazardous materials such as ethanol, which is another flammable liquid that is commonly transported in large quantities by rail. In 2012, more carloads of ethanol were transported via rail than any other hazardous material. The railroads experienced an increase in ethanol traffic of 442 percent between 2005 and 2010. Although in 2013 the number of carloads dropped by 10 percent from 2010 levels, there were still approximately 297,000 carloads transported by rail. Since 2009, there have been at least four major mainline derailments resulting in the breach of tank cars containing ethanol. While FRA recognizes that none of these four derailments resulted from a roll-away situation, they are instructive on the destructive potential of a derailment involving tank cars containing flammable products:

- On August 5, 2012, in Plevna, Montana, a BNSF Railway Co. train derailed 18 cars while en route from Baker, Montana. Seventeen of the 18 cars were tank cars loaded with denatured alcohol, a form of ethanol. Five of the cars caught on fire resulting in explosions, the burning of surrounding property not within the railroad's right-of-way, and the evacuation of the immediate area.
- On July 11, 2012, in Columbus, OH, a Norfolk Southern Railway Co. train derailed while operating on main track. Thirteen tank cars containing ethanol derailed resulting in a fire and the evacuation of 100 people within a one-mile radius of the derailment.
- On February 6, 2011, in Arcadia, Ohio, a Norfolk Southern Railway Co. train operating on single main track derailed 33 tank cars loaded with ethanol. The derailment caused a major fire and forced the evacuation of a one-mile radius around the derailment.
- On June 19, 2009, in Cherry Valley, Illinois, a Canadian National Railway train derailed 19 tank cars loaded with ethanol. Thirteen of the 19 derailed cars caught fire, and there were reports of explosions. One person died, and there were 9 reported injuries related to the fire. Additionally, approximately 600 residences were evacuated within a ½-mile radius of the derailment.

While these accidents were serious, their results had potential for more higher-consequence outcomes. The higher-consequence releases created the potential for additional deaths, injuries, property damage, and environmental damage.

There are other hazardous materials that have similar potential for higher-consequence danger. For example, accidents involving trains transporting other hazardous materials, including PIH materials such as chlorine and anhydrous ammonia, can also result in serious consequences as evidenced by the following accidents:

- On January 6, 2005, in Graniteville, South Carolina, a Norfolk Southern Railway Co. train collided with another Norfolk Southern Railway Co. train that was parked on a customer side track, derailing both locomotives and 16 cars of the moving train. The accident was caused by a misaligned switch. Three tank cars containing chlorine derailed, one of which was punctured. The resulting chlorine exposure caused 9 deaths, approximately 554 people were taken to local hospitals, and an additional 5,400 people within a one-mile radius of the site were evacuated by law enforcement personnel. FRA's analysis of the total cost of the accident was $126 million, including fatalities, injuries, evacuation costs, property damage, environmental cleanup, and track out of service.
- On June 28, 2004, near Macdona, TX, a Union Pacific Railroad Co. train passed a stop signal and collided with a BNSF Railway Co. train. A chlorine car was punctured, and the chlorine gas that was released killed three and injured 32.
- On January 18, 2002, a Canadian Pacific Railway train containing 15 tank cars of anhydrous ammonia derailed half a mile from the city limits of Minot, North Dakota due to a breaking of the rail at a joint. Five of these tank cars ruptured, which resulted in an ammonia vapor that spread 5 miles downwind over an area where 11,600 people lived. The accident caused one death, 11 serious injuries, and 322 minor injuries. Environmental cleanup costs reported to the NTSB were $8 million.
- On July 18, 2001, 11 of 60 cars in a CSX Transportation, Inc. freight train derailed while passing through the Howard Street Tunnel in downtown Baltimore, Maryland. The train included 8 tank cars loaded with hazardous material; 4 of these were among the cars that derailed. A leak in a tank car containing tripropylene resulted in a chemical fire. A break in a water main above the tunnel flooded both the tunnel and the streets above it with millions of gallons of water.

While train accidents involving hazardous materials are caused by variety of factors, nearly one-half of all accidents are related to railroad human factors or equipment defects. FRA's data shows that since 2009, human factors have been the most common cause of reportable train accidents. Based on FRA's accident reporting data for the period from 2010 through May 2014, approximately 34 percent of reported train accidents/incidents, as defined by 49 CFR 225.5, were human factor-caused.[13] With regard to the securement of unattended equipment, specifically, FRA accident/incident data indicates that approximately 8.7 percent of reported human factor-caused train accidents/incidents from calendar year 2010 until May 2014 were the result of improper securement, which means that improper securement is the cause of approximately 2.9 percent of all reported accidents/incidents.[14] The types of securement errors that typically lead to accidents/incidents include failing to apply any hand brakes at all, failing to apply a sufficient number of hand brakes, and failing to correctly apply hand brakes. Emergency Order 28 and this proposed rulemaking intend to address some of the human factors failures that may cause unattended equipment to be improperly secured to protect against a derailment situation similar to that which occurred in Lac-Mégantic.

C. Current Securement Regulations and Related Guidance

As previously noted, FRA has existing regulations designed to ensure that trains and vehicles are properly secured before being left unattended. *See* 49 CFR 232.103(n). In FRA's view, if existing regulations are followed, the risk of movement of unattended equipment is substantially reduced. The current regulations define "unattended equipment" as "equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person." *Id.* Section 232.103(n) generally addresses the securement of unattended equipment by stating that a train's air brakes must not be depended on to hold equipment standing unattended on a grade. More specifically, § 232.103(n) also requires that the railroad apply a sufficient number of hand brakes to hold the equipment with the air brakes released and that the brake pipe pressure be reduced to zero with the angle cock opened on one end of a cut of cars when

[13] FRA estimates that there were a total of approximately 8,976 accidents/incidents reported during that time period. Approximately 3,030 of those accidents/incidents were caused by human factors, and 906 involved equipment that was placarded as containing hazardous materials.

[14] There were a total of approximately 264 reported accidents/incidents that were caused by securement errors. Of those 264 accidents/incidents, approximately 98 involved equipment that was placarded as containing hazardous materials.

not connected to a locomotive or other compressed air source. The regulations also require railroads to develop a process or procedure for verifying that the hand brakes applied are sufficient to hold the equipment with the air brakes released. When dealing with locomotives and locomotive consists, § 232.103(n)(3) establishes specific additional requirements:

- All hand brakes must be fully applied on all locomotives in the lead consist of an unattended train.
- All hand brakes must be fully applied on all locomotives in an unattended locomotive consist outside of yard limits.
- The minimum requirement for an unattended locomotive consist within yard limits is that the hand brake must be fully applied on the controlling locomotive.
- Railroads must develop, adopt, and comply with procedures for securing any unattended locomotive that is not equipped with an operative hand brake.

Additionally, FRA requires each railroad to adopt and comply with instructions addressing each unattended locomotive's position of the throttle, generator field switch, isolation switch, and automatic brake valve and the status of its reverser and independent brakes. *See* 49 CFR 232.103(n)(4).

FRA has also issued guidance documents interpreting these regulations. For instance, on March 24, 2010, FRA issued Technical Bulletin MP&E 2010–01, Enforcement Guidance Regarding Securement of Equipment with Title 49 Code of Federal Regulations Section 232.103(n) (TB 10–01), *available at http://www.fra.dot.gov/eLib/details/L02394.* While FRA continues to believe that the securement requirements of § 232.103 are not met where there is a complete failure to apply even a single hand brake on unattended equipment, FRA also recognizes that there are times when it is necessary to have unsecured equipment, such as during switching activities when assembling and disassembling trains within classification yards. Therefore, TB 10–01 provides guidance regarding alternative forms of securement in such instances. As an example, TB 10–01 notes that FRA will allow a train crew cutting away from a cut of cars, to initiate an emergency brake application on the cut of cars, and then close the angle cock if the crew is taking a locomotive consist directly to the opposite end of the cut of cars to in order to couple the locomotive consist to the cars or to open the angle cock at the other end and leave the angle cock open and vented to the atmosphere, as required under 49 CFR 232.103(n)(2). Additionally, TB 10–01 makes clear that FRA will allow the use of skates and retarders in hump classification yards, classification yards with bowl tracks, or flat switching yards if the retarders and skates are used within their design criteria and as intended. While this proposal does not contain any specific proposed regulatory text referencing the content of TB 10–01, FRA is considering codifying TB 10–01 by amending the rule at the final rule stage of this proceeding. This would constitute a clarifying amendment to ensure that FRA's long-standing interpretation and application of the existing regulation is contained directly in the regulation. FRA seeks comments on clarifying the rule to address the provisions of TB 10–01 in the final rule.

Despite the demonstrated effectiveness of FRA's current securement regulations, FRA recognizes that due to increased shipments of hazardous materials such as crude oil and ethanol, combined with the potential for higher-consequences related to any accident that might occur due to improper securement, particularly on mainline track and mainline sidings outside of a yard or terminal, proper securement has become a serious and immediate safety concern. Therefore, FRA established additional securement measures in Emergency Order 28 in an effort to ensure the continued protection of the health and safety of railroad employees, the general public, and the environment. In this NPRM, FRA proposes establishing permanent rules that will strengthen the current regulations and ensure public safety by adopting the necessary and effective securement measures that FRA included in Emergency Order 28 as part of its immediate response to the Lac-Mégantic derailment.

Also notable is that over the past year, FRA and PHMSA have undertaken nearly two dozen actions to enhance the safe transport of crude oil. This comprehensive approach includes near- and long-term steps such as the following: Launching "Operation Classification" in the Bakken region to verify that crude oil is properly classified; issuing safety advisories, alerts, emergency orders and regulatory updates; conducting special inspections; aggressively moving forward with a rulemaking to enhance tank car standards; and reaching agreement with railroad companies on a series of immediate voluntary actions including reducing speeds, increasing inspections, using new brake technology and investing in first responder training. Most of those actions have been well outside the scope of securement. However, FRA references these actions here to help place this rulemaking in the broader context of DOT's wide-ranging response to the safety issues created by these trains. For a summary of these actions, *see* Federal Railroad Administration's Action Plan for Hazardous Materials Safety, Federal Railroad Administration (May 20, 2014) *available at http://www.fra.dot.gov/eLib/details/L04721.*

D. Emergency Order 28 and Related Guidance

On August 2, 2013, FRA issued Emergency Order 28 establishing additional requirements on the treatment of securement of unattended equipment. On the same date, FRA issued a related Safety Advisory and announced an emergency RSAC meeting. *See* Federal Railroad Administration Safety Advisory 2013–06, Lac-Mégantic Railroad Accident and DOT Safety Recommendations, 78 FR 48224 (Aug. 7, 2013), *available at http://www.fra.dot.gov/eLib/details/L04720.* FRA also subsequently issued guidance related to Emergency Order 28 and granted partial relief from Emergency Order 28 to the AAR and ASLRRA. *See* Guidance on Emergency Order 28 (Aug. 21, 2013), available at *https://rsac.fra.dot.gov/meetings/20130829.php;* Letter from Robert C. Lauby, Acting Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, to Michael J. Rush, Associate General Counsel, AAR, and Keith T. Borman, Vice President and General Counsel, American Short Line and Regional Railroad Association, (Aug. 27, 2013), *available at https://rsac.fra.dot.gov/meetings/20130829.php.*

E. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway & Transportation Officials (AASHTO);
- American Chemistry Council (ACC);
- American Petroleum Institute (API);
- American Public Transportation Association (APTA);

- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- AAR;
- Association of State Rail Safety Managers (ASRSM);
- Association of Tourist Railroads and Railway Museums (ATRRM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employes Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers (IAM);
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement (LCLAA);*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Passenger Car Alliance (RPCA)
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- SMART Transportation Division (SMART TD);
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/Brotherhood of Railway Carmen (TCIU/BRC);
- Transportation Security Administration (TSA).

* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force, or other subgroup, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goals, is soundly supported, and is in accordance with applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA resolves the issue(s) through traditional rulemaking proceedings or other action.

The RSAC convened an emergency session on August 29, 2013, in response to the accident at Lac-Mégantic, to brief members on the preliminary findings of the accident, to discuss the safety issues related to the accident, and to discuss Emergency Order 28. At that meeting, the RSAC accepted Task No. 13–03 to refer to the Securement Working Group (SWG) the responsibility of ensuring that "appropriate processes and procedures are in place to ensure that any unattended trains and vehicles on mainline track or mainline sidings outside of a yard or terminal are properly secured against unintended movement, and as appropriate, such securement is properly confirmed and verified." In doing so, the SWG was tasked with reviewing: the standards for the securement of unattended equipment under 49 CFR 232.103(n) and its concomitant regulatory guidance published in TB 10–01; the requirements of Emergency Order 28; and the recommendations contained in Federal Railroad Administration Safety Advisory 2013–06—Lac-Mégantic Railroad Accident Discussion and DOT Safety Recommendations. The SWG was also tasked with identifying any other issues relevant to FRA's regulatory treatment of securement of equipment to prevent unintended movement. While the RSAC also tasked the SWG with reviewing operational testing, the SWG concluded that no changes were necessary to the regulations relating to operational testing.

In addition to FRA, the following organizations contributed members to the SWG:

- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), Genesee & Wyoming Inc. (GNWR), Kansas City Southern Railway (KCS), Long Island Rail Road (LIRR), Metro-North Railroad (MNCW), Northeast Illinois Regional Commuter Railroad Corporation (METRA), Norfolk Southern Railway Company (NS), Railway Association of Canada, and Union Pacific Railroad Company (UP);
- Amtrak;
- API;
- APTA, including members Keolis North America, Massachusetts Bay Commuter Railroad Company, LLC (MBCR); and North County Transit District (NCTD);
- ASLRRA, including members from Anacostia Rail Holdings, Central California Traction Company (CCT), OmniTRAX, Rio Grande Pacific Corporation, and WATCO Companies, Inc. (WATCO);
- ASRSM, including members from California Public Utilities Commission (CPUC);
- ATDA;
- BLET;
- BMWED;
- BRS;
- IAM;
- NRC, including members from Herzog Transit Services (Herzog);
- NTSB;
- PHMSA;
- RSI;
- SMART TD;
- TCIU/BRC;
- Transport Canada; and
- TWU.

The SWG convened subsequently on October 30, 2013, December 17, 2013, January 28, 2014, and March 4, 2014, in Washington, DC to respond to these tasks and voted to approve the recommendation on March 4, 2014. The SWG presented its recommendation to the full RSAC, which voted by electronic ballot between March 25 and March 31, 2015, to accept the

recommendations. On April 2, 2014, the RSAC announced that by majority vote the recommendations had been approved and would become its recommendation to the Administrator.

The recommendation of the RSAC include amendments to 49 CFR 232.103(n) that would do the following: (1) provide additional requirements for the securement of unattended equipment carrying certain hazardous materials; (2) mandate the implementation of operating rules and practices requiring that securement be part of all relevant job briefings; and (3) require adoption and compliance with procedures to secure equipment subsequent to an emergency response. The RSAC recommendation also includes amendments to 49 CFR 232.105 that would require equipping locomotives with exterior locking mechanisms.

III. Section-by-Section Analysis

Unless otherwise noted, all "part" and "section" references below refer to provisions either in title 49 of the CFR or proposed to be in title 49 of the CFR. FRA seeks comments on all proposals made in this NPRM.

Before entering into specific analysis of each proposed section, it is important to make clear that this proposal, which provides more restrictive securement requirements for specific types of equipment, does not affect FRA's policy concerning the Federal hours of service requirements. FRA continues to believe that a railroad may not require or allow a train employee with an accumulated time on duty of 12 hours or more to remain on a train for the sole purpose of meeting the securement requirements, including those proposed here. A train employee may, however, remain on an unsecured train, if that employee is legitimately waiting for deadhead transportation from duty to a point of final release, performs no covered or commingled service,[15] and is free to leave the equipment when deadhead transportation arrives. In this case, time spent waiting for and in deadhead transportation is treated as neither time on duty nor time off duty.

FRA also notes that this proposed rule does not include the portion of Emergency Order 28 that requires railroads to review, verify, and adjust, as necessary, existing requirements and instructions related to the number of hand brakes to be set on unattended trains and vehicles, and to review and adjust, as necessary, the procedures for verifying that the number of hand brakes is sufficient to hold the train or vehicle with the air brakes released. It was FRA's concern that existing railroad processes and procedures related to setting and verifying hand brakes on unattended trains and equipment were not sufficient to hold all trains and vehicles in all circumstances. FRA believes that the railroads have fulfilled this requirement and thus there is no need to include it in this proposed rule. FRA seeks comments on the exclusion of this Emergency Order 28 requirement here.

Proposed Amendments to 49 CFR Part 232

Section 232.5 Definitions

In the 2001 rule, the definition of "unattended equipment" was included in § 232.103(n). As further discussed below, FRA is proposing a new paragraph (h) for § 232.105, which would also make use of the definition for "unattended equipment." Since the term would be used in multiple sections, FRA believes it would be prudent to move the definition to the more broadly applicable definitions in § 232.5. Doing so would also allow FRA to rephrase paragraph (n) for clarity purposes, as discussed further below. Proposed placement of the definition in § 232.5 would not change its meaning and would be solely for applicability and clarity purposes.

FRA proposes changing the term "yard limits" to "yard" without any change to its definition, with concurrent changes from "yard limits" to "yard" in § 232.103(n). FRA also proposes to include the term "yard" in its new § 232.105(h). As currently defined in part 232, a yard limit is "a system of tracks, not including main tracks and sidings, used for classifying cars, making-up and inspecting trains, or storing cars and equipment." But in part 218, yard limits are described as a railroad-designated operating territory that is established by yard limit signs; and timetable, train orders, or special instructions. *See* 49 CFR 218.35(a). Making this change clarifies that specific securement practices are connected to the physical presence of a yard, and not to an operating practices description of yard limits, which could potentially encompass an entire railway system.

Section 232.103 General Requirements for all Train Brake Systems

As previously noted, FRA is proposing to move the definition of "unattended equipment" to § 232.5, creating an opportunity to rephrase and clarify the introductory language of paragraph (n). Part of this proposal is to move the opening sentence in paragraph (n)—"A train's air brake shall not be depended upon to hold equipment standing unattended on a grade (including a locomotive, a car, or a train whether or not locomotive is attached)"—to paragraph (n)(2). The introductory language of paragraph (n) would remain more succinct and clear.

While it is not an RSAC recommendation, FRA also proposes to amend paragraph (n)(1) to make more clear its existing expectation that in most circumstances at least one hand brake must be applied to hold unattended equipment. While this has been stated in earlier rulemakings and guidance documents, *see e.g.*, TB 10–01, there has been some confusion about whether the use of wheel chocks, skates, or other securement devices is sufficient to hold unattended equipment. FRA's longstanding interpretation is that at least one hand brake is required to hold unattended equipment except in certain limited situations. For instance, in a hump classification yard an alternative form securement, such as skates and retarders may be allowed provided they are used within their design criteria and as intended. FRA believes adding explicit language to the regulatory text is warranted in order to formally address the requirement to set at least one hand brake in most instances.

As previously mentioned, proposed paragraph (n)(2) would be amended to include language from the introduction of paragraph (n), which prohibits a train's air brake from being depended upon to hold equipment standing unattended on a grade (including a

[15] A person is considered by the hours of service laws to be neither on duty nor off duty during periods they are either waiting for or in deadhead transportation to their point of final release (i.e., have completed their time on duty and are waiting for or in transportation to end their duty tour). In order to be considered "waiting for" deadhead transportation, the person must not be required to perform other duties. Merely being on a train and remaining sufficiently alert to respond to any unintended movement of the equipment is not inherently performing a duty; being on or with the train is a necessary element of waiting for transportation from the train. This is true even when the railroad receives the benefit of having the train attended while employees aboard wait for transportation. Such time is considered "limbo time" and is not contingent upon the train's securement status. *See BLET v. Atchison Topeka and Santa Fe Railway,* 516 U.S. 152 (1996) (holding that the time waiting for deadhead transportation under the hours of service laws must be counted as "limbo time."). However, should the employee be required to perform some activity to prevent the movement of the equipment or to secure the train prior to departing with deadhead transportation, then the time spent performing the activity and any intervening time spent waiting would be considered covered and commingled service respectively. *See* 49 CFR part 228, app. A. Thus, whether a train is secured or unsecured when an employee is waiting for deadhead transportation, that waiting time will count as limbo time, so long as no covered activities are performed.

locomotive, a car, or a train whether or not locomotive is attached). FRA further proposes to remove the phrase "on a grade," as such a requirement is arguably superfluous and confusing. Perfectly level track is rare, and there is still a risk of unattended movement caused by numerous factors, such as a mistake in the location or length of the level track, the effect of extreme weather, or an impact from other equipment. Moreover, the phrase "on a grade" has led some to the erroneous conclusion that hand brakes must only be applied if the equipment is left on a grade. While grade is likely a factor in determining the number of hand brakes that would sufficiently hold unattended equipment, it is not a factor in determining whether hand brakes should be applied at all. Accordingly, FRA proposes that the language be modified to make clearer that the hand brake application requirement is universal, regardless of grade.

Proposed paragraphs (n)(6) through (n)(8) attempt to address the aforementioned heightened concerns relating to the securement of unattended equipment carrying certain hazardous materials. Proposed paragraph (n)(6) defines the type of cars covered by these requirements and is intended to ensure that proposed paragraphs (n)(7) and (n)(8) apply only to equipment that includes loads. Specifically, paragraph (n)(6) provides that the substantive requirements of paragraphs (n)(7) and (n)(8) will apply to:

(1) any loaded freight car containing PIH material, including anhydrous ammonia and ammonia solutions; or

(2) twenty (20) or more loaded cars or loaded intermodal portable tanks of any one or any combination of PIH materials (including anhydrous ammonia and ammonia solutions), or any flammable gas, flammable or combustible liquid, explosives, or a hazardous substance listed at § 173.31(f)(2) of this title.

FRA notes that this language is broader than the language used in PHMSA's NPRM on Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (HHFTs). *See* 79 FR 45016 (Aug. 1, 2014). In that rule, PHMSA proposed certain new requirements for HHFTs, which it defines as "a train comprised of 20 or more carloads of a Class 3 flammable liquid and ensures that the rail requirements are more closely aligned with the risks posed by the operation of these trains." 79 FR at 45017. Paragraph (n)(6) proposes new securement requirements that would cover a single PIH tank car. Moreover, where the proposed PHMSA rule would only cover trains with 20 or more carloads of flammable liquids, paragraph (n)(6) proposes to cover situations where there are 20 or more carloads or loaded intermodal portable tanks of PIH materials, flammable gases, flammable or combustible liquids, explosives, other hazard substances listed at § 173.31(f)(2), or any combination thereof. FRA seeks comment on this proposal and also seeks comment on whether a defined term should be used for equipment covered under paragraph (n)(6).

The proposed regulatory text exempts residue cars from consideration. Residue cars are defined by PHMSA under the HMRs. FRA will continue to rely on the HMRs for this definition, even if amended. Together, FRA and PHMSA are concurrently considering new regulations relating to the placement in trains of cars containing hazardous materials. In that effort, loaded and residue cars may be treated the same. FRA does not believe that any resulting train placement regulation would affect the securement regulations we are considering in the instant proceeding. Nevertheless, the parties have expressed concerns that such inconsistent use may foster confusion or be "pitted against one another." FRA seeks further comment explaining how such confusion or conflict may manifest itself.

Proposed paragraph (n)(7) provides certain conditions under which such equipment may be left unattended, including the development of a plan identifying locations where such equipment may be left unattended. Proposed paragraph (n)(8) includes specific requirements regarding the securement of such equipment.

Emergency Order 28 prohibits each railroad from leaving trains or vehicles that are transporting certain hazardous materials on mainline track or mainline siding outside of a yard or terminal unless the railroad adopts and complies with a plan that identifies the specific locations and circumstances for which it is safe and suitable for leaving such trains or vehicles unattended. According to Emergency Order 28, the plan must contain sufficient analysis of the safety risks and any mitigating circumstances the railroad has considered in making its determination. FRA expressed its intent not to formally grant approval to any plan, and it continues to monitor such plans. In the event that FRA determines that adequate justification is not provided, the railroad is required to ensure that trains and equipment are attended until appropriate modifications are made to the railroad's plan.

In proposed paragraph (n)(7)(i), FRA intends to continue these requirements by regulation. While FRA continues to believe that it is not necessary to provide approval for each plan, which could take considerable resources, FRA must ensure proper enforcement and oversight. Accordingly, proposed paragraph (n)(7)(i) includes a requirement that the railroad notify FRA when it modifies its existing plan and provide FRA with a copy of the plan upon request. For similar reasons, FRA will also retain the right to require modifications to any insufficient plan.

Proposed paragraph (n)(7)(i), however, differs from Emergency Order 28 in one manner. It allows a railroad to leave a train or equipment unattended on mainline track that is running through a yard or on mainline track that is adjacent to the yard without covering the location in the railroad's plan. This change is based on feedback received during the SWG meetings, which voted unanimously to adopt the proposed language in paragraph (n)(7)(i), with the recommendation of the full RSAC to move forward with the regulatory provision.

In Emergency Order 28, FRA made a decision that it was not necessary to include mainline tracks and mainline sidings that run through a yard in a railroad's plan for leaving equipment unattended. FRA's rationale for this decision was that a yard was defined space where the railroad performed a particular set of tasks (classifying cars, making-up and inspecting trains, or storing cars and equipment). As a result of the tasks performed there, yards tend to have appropriate geographic characteristics, sufficient railroad activity, and a population of railroad personnel in close proximity that make them safer places for leaving equipment unattended. In FRA's view, mainline tracks that run through yards share those characteristics with the yard tracks surrounding it and is often used as a *de facto* "yard" track to assist with classifying cars and with making-up and inspecting trains. As such, FRA did not see a need when drafting Emergency Order 28 for railroads to identify mainline tracks within a yard in the railroad's securement plan before a railroad would be allowed to leave equipment unattended on the mainline track that is surrounded by a yard.

The feedback received through the RSAC process was that tracks adjacent to the yard share many of the same characteristics as mainline tracks that run through a yard. Therefore, FRA has proposed in this rulemaking to treat mainline track that is adjacent to the yard in the same manner that it is

currently treating mainline track that runs through a yard under Emergency Order 28. In proposing this change, FRA intends only to cover those tracks that are immediately adjacent to the yard and that are in close enough proximity to the yard that the adjacent tracks share the characteristics of the yard. FRA seeks comments on its treatment of tracks adjacent to the yard.

Proposed paragraph (n)(7)(ii) would establish new requirements for those trains that are left unattended on mainline track that is running through a yard or on mainline track that is adjacent to the yard. It would apply aspects of Emergency Order 28 to these tracks by requiring verification that securement has been completed in accordance with the railroad's process and procedures (see discussion below concerning paragraph (n)(8)(i)), and that the locomotive cab is locked or the reverser is removed from the control stand and placed in a secured location (see discussion below concerning paragraph (n)(8)(ii)).

Emergency Order 28 requires railroads to develop specific processes for employees responsible for securing any unattended train or vehicles transporting certain hazardous materials that must be left on mainline track or a mainline siding outside of a yard. FRA believes that this requirement should continue in regulation. The proposed rule allows a railroad to leave a paragraph (n)(6) train unattended on mainline track or a siding outside of a yard where the railroad has a plan in place and on mainline tracks that are in or adjacent to yards. In doing so, proposed paragraph (n)(8)(i) requires the employee responsible for the securement of the equipment to verify securement and proposed paragraph (n)(8)(ii) requires the train crew to lock the controlling locomotive cab or remove and secure the reverser from the control stand.[16]

Proposed paragraph (n)(8)(i) requires that an employee responsible for securing equipment defined by paragraph (n)(6) verify securement with another qualified person. This is similar to Emergency Order 28 which currently requires employees to verify proper securement with a qualified railroad employee. This may be done by relaying pertinent securement information (i.e., the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured) to the qualified railroad employee. The qualified railroad employee must then verify and confirm with the train crew that the securement meets the railroad's requirements. However, proposed paragraph (n)(8)(i) does not contain a requirement that the railroad maintain a record of the verification of proper securement.

FRA believes that the type of verification requirement in proposed paragraph (n)(8)(i) will serve to ensure that any employee who is responsible for securing equipment containing hazardous materials will follow appropriate procedures because the employee will need to fully consider the securement procedures to relay what was done to the qualified employee. Further, the qualified railroad employee (e.g. a trainmaster, road foreman of engines, or another train crew employee) will be in a position to ensure that a sufficient number of hand brakes have been applied. Under this proposed rule, the qualified railroad employee must have adequate knowledge of the railroad's securement requirements for the specific location or for the specific circumstance for which the equipment will be left unattended. Without limiting the type of employee who may be qualified, FRA envisions that a dispatcher, roadmaster, yardmaster, road foreman of engines, or another crew member would be able to serve in the verification capacity.

FRA has decided not to continue the recordation requirement based on experience in enforcing Emergency Order 28. FRA has found that requiring recordation of securement information is superfluous because the verification requirement ensures that two individuals consulting with each other make certain that the appropriate securement method is used. The intent of the recordation requirement was to ensure the communications are taking place. FRA has found over the last year that communications occur in the course of the verification process. Therefore, it does not believe requiring railroads to make a record of each securement event is necessary to ensure proper securement. Nevertheless, FRA seeks comment concerning enforcement of the verification requirement, absent recordation.

Also under Emergency Order 28, the employees responsible for securing the train or vehicles must lock the controlling locomotive cab door or remove and secure the reverser before leaving it unattended. Accordingly, proposed paragraph (n)(8)(ii) requires further protection of the locomotive to prevent movement of unattended equipment that could be caused by unauthorized access to the locomotive cab.

Representatives from the railroad labor strongly suggested at the SWG meetings that a locking mechanism be applied to each locomotive covered under this rule, seeking that lock installation be complete within 18 months. BLET stated that locomotive cab security is a major concern to the labor caucus.

The language approved by the SWG provided that the controlling locomotive cab shall be locked on locomotives capable of being locked or the reverser on the controlling locomotive shall be removed from the control stand and placed in a secured location. The use of the conjunctive appears to indicate a choice; each railroad may opt to either lock the locomotive or remove its reverser. However, based on the discussions during the SWG meetings, FRA believes that the SWG intended for proposed paragraph (n)(8)(ii) to mean that all covered locomotives should be locked when so equipped. FRA has made slight alterations to the language in paragraph (n)(8)(ii) from the language that was approved by the SWG in order to more accurately address the lock requirement. FRA understands that the reverser provision is intended for the interim period until locks are installed or when a locomotive has been equipped with a lock but the lock has become inoperative. FRA also notes that under this proposal a railroad would be free to require both the locking of the locomotive and the removal of the reverser. FRA does not intend to limit a railroad to just one or the other. FRA seeks comment on this understanding, particularly as to whether the alternative of removing the reverser should only be available during the timeframe when the locking mechanism becomes broken or otherwise ineffective or whether, in the interest of safety redundancy, the regulations should require railroads to both lock cab doors and to remove reverser handles.

When a railroad relies on removing the reverser as a means for securement, FRA expects that the reverser will be taken by the appropriate railroad employee from the controlling locomotive cab so that it is not accessible to an unauthorized person such as a trespasser. Alternatively, FRA anticipates allowing the reverser to be secured in the cab of an unlocked controlling locomotive as long as the reverser is kept in a box or other compartment that can be locked within the locomotive cab. However, FRA would not consider a reverser "secured" within the meaning of this proposal if

[16] The reverser is the directional control for the locomotive. Removing the reverser would essentially put the locomotive in neutral, preventing it from moving forward or backward under the power of the engine.

the railroad allows the reverser to be stored merely out of plain sight.

In most instances, FRA would consider a locomotive with an ineffective locking mechanism to be noncompliant with paragraph (n)(8)(ii) if the locomotive is left unattended with the reverser remaining in the control stand. FRA recognizes that there may be times when a locomotive's lock becomes inoperative and its reverser cannot be removed, thus making compliance with proposed paragraph (n)(8)(ii) nearly impossible. Accordingly, for such instances, FRA proposes an exception under paragraph (n)(8)(iii). FRA believes that application of this exception would only be utilized on the rare occasion where older locomotives with integrated reversers may be utilized or where weather conditions make the reverser necessary for operations (i.e., to prevent the locomotive from freezing). FRA seeks comments on the intent, application, and language of this proposed exception.

FRA believes that the job briefing requirement in Emergency Order 28 should be codified in regulation. Accordingly, proposed paragraph (n)(9) would require each railroad to implement operating rules and practices requiring the discussion of securement among crew members and other involved railroad employees before engaging in any job that will impact or require the securement of any equipment in the course of the work being performed. This proposed requirement is analogous to other Federal regulations that require crew members to have a job briefing before performing various tasks, such as confirming the position of a main track switch before leaving an area. The purpose of this proposed job briefing requirement is to make certain that all crew members and other involved railroad employees are aware of what is necessary to properly secure the equipment in compliance with § 232.103(n).

Under this proposal, FRA expects that the crew will discuss the equipment that is impacted, the responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, how the verification will be determined, and any other relevant factors affecting securement. FRA seeks comments on whether these expectations are reasonable, accurate, and either sufficiently comprehensive or somehow lacking.

FRA recognizes that in some instances, there may be only one crew member performing a switch or operation and that would have to secure equipment alone at the end of the activity. FRA believes that the issue of self-satisfying a job briefing is best left to the railroad when complying with part 218. Nevertheless, FRA seeks comments on how to apply this requirement in a situation involving a single person crew and how it interrelates with part 218.

Under paragraph (n)(10), FRA is proposing to require railroads to develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the rail equipment or train is left unattended. As it may be necessary for emergency responders to modify the state of the equipment for the performance of their jobs by going on, under, or between equipment, it is critical for the railroad to have a qualified employee subsequently inspect the equipment to ensure that the equipment continues to be properly secured before it is again left unattended.

The proposed rule requires railroads to establish a process to ensure that a qualified railroad employee inspects all equipment that any emergency responder (e.g., fireman or paramedic) has been on, under, or between for proper securement before the train or vehicle is left unattended. FRA understands that on rare occasions there may be situations where an emergency responder accesses railroad equipment without the knowledge of the railroad. The railroad's process can take that type of situation into account; however, FRA will expect that a qualified railroad employee will inspect equipment after it has been accessed by an emergency responder in any circumstance where the railroad acting in a reasonable manner knew or should have known of an emergency responder's presence on, under, or between the subject equipment.

The proposed rule requires that these procedures are followed as soon as safely practicable after learning that an emergency responder has interfaced with the equipment. FRA seeks comments on what should be considered "as soon as safely practicable."

Section 232.105 General Requirements for Locomotives

FRA proposes a new paragraph (h) to § 232.105 to provide further requirements concerning locking mechanisms on locomotive doors. While proposed § 232.103(n)(8)(ii) provides securement controls for the controlling locomotive cab that is left unattended on a mainline track or siding as part of a train that meets the minimum quantities of hazardous materials established in proposed § 232.103(n)(6)(i), FRA believes that additional requirement should apply to all locomotives left outside a yard. Accordingly, FRA proposes including those requirements under § 232.105.

During the meetings of the RSAC SWG, representatives of the labor unions proposed requiring the installation of locking mechanisms on all locomotives covered by these proposed rules. AAR subsequently committed that *all* locomotives will be equipped with cab door locks by March of 2017. AAR clarified its statement by ensuring that there will be no distinction between interchange and non-interchange locomotives. In the interest of codifying this deadline as applicable to the scope of this proposed rule, paragraph (h)(1) proposes that after March 1, 2017, each locomotive left unattended outside of a yard be equipped with an operative exterior locking mechanism. By no means does this requirement limit AAR's ambition that its members equip additional locomotives (e.g., switching locomotives inside a yard) in their respective fleets. FRA also proposes to include this requirement in § 232.105 so that it applies to all locomotives left unattended outside of a yard or on a track immediately adjacent to a yard, not just those locomotives defined under § 232.103(n)(6). FRA seeks comment on this requirement.

Proposed paragraphs (h)(2) and (h)(3) are meant to ensure that locking mechanisms, if broken or otherwise inoperative, are repaired in a reasonable timeframe. FRA expects that each locomotive equipped with a locking mechanism will be inspected and maintained at the time of the locomotive's periodic inspection. *See* 49 CFR 229.23. If a locking mechanism is found inoperative at any time other than the periodic inspection, proposed paragraph (h)(3) would require the railroad to repair it within 30 days. However, if the periodic inspection falls within the 30-day limit for repair, FRA would expect that the lock will be repaired at the time of the periodic inspection in accordance with the requirement in paragraph (h)(2). For instance, if a locomotive engineer were to find the lock inoperative during a daily inspection and the periodic inspection was scheduled 15 days later, then FRA would expect that the railroad

will repair the locking mechanism at the time of the periodic inspection. Alternatively, if the same situation were to arise but the periodic inspection was scheduled to occur 45 days later, the railroad would be expected to repair the locking mechanism prior to the time of the periodic inspection to comply with the 30-day time limit in paragraph (h)(3).

For the purposes of this regulation, "operative" means that, when applied, the locking mechanism will reasonably be expected to keep unauthorized people from gaining access into a locomotive while the locomotive is unoccupied. However, in doing so, the railroad must assure that ingress and egress is provided for in normal circumstances and emergencies. FRA seeks comments on this understanding. FRA also seeks information and comments on the possibility of a qualified person finding difficulty accessing the locomotive cab in the event of an unintentional movement of the equipment.

Under proposed paragraph (h)(4), if a locking mechanism becomes inoperative in the interval between a locomotive's periodic inspection dates, this provision does not require that a locomotive be removed from service upon the discovery of an inoperative locking mechanism. Railroads may continue to use the locomotive without an operative lock. However, if such equipment covered by proposed § 232.103(n)(6) is left unattended and without an operative lock, then the railroad must default to the alternative securement option governing the reverser under proposed § 232.103(n)(8)(ii) or fall under the exception provided per proposed § 232.103(n)(8)(iii).

IV. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under Executive Order 12866, Executive Order 13563, and DOT policies and procedures. 44 FR 11034 (Feb. 26, 1979). For purposes of analyzing this rule, FRA uses as a baseline the rules in effect at the time of publication, including Emergency Order 28. The analysis separately quantifies ongoing costs of Emergency Order 28 that might exceed business practices that would remain in effect in absence of Emergency Order 28. It is reasonable to assume that most of the requirements of Emergency Order 28 would continue as business practices; for example the railroads have already improved their practices in determining the proper application of hand brakes to secure a train and the verification that the hand brake application is adequate. Further, the exterior locking mechanism provision in the rule reflects an existing commitment among AAR member railroads, which had been working on developing a lock standard applicable to its members for over a year, so the costs associated with this provision are limited to non-AAR member railroads, primarily short line railroads. This analysis also does not include sunk costs.

FRA was able to quantify the costs of the proposed rule, but not able to quantify all the benefits, as many of the benefits are the result of reducing risk from high consequence, low probability events that are not easily quantified. Thus, FRA will discuss the benefits that can be quantified, that by themselves justify the cost of the proposal and will provide a brief discussion of the non-quantified benefits. The monetized discounted and annualized net benefits would be:

Discounted values	Discounted value	
	Discount factor	
	7%	3%
Total	$1,076,984	$1,479,331
Annualized	95,009	96,538

Statement of Need

The United States has experienced a dramatic growth in the quantity of flammable materials being shipped by rail in recent years. According to the rail industry, in the U.S. in 2009, there were 10,800 carloads of crude oil shipped by rail. In 2013, there were 400,000 carloads. In the Bakken region, over one million barrels a day of crude oil was produced in March 2014,[17] most of which is transported by rail. Transporting flammable material carries safety and environmental risks. The risk of flammability is compounded in the context of rail transportation because petroleum crude oil and ethanol are commonly shipped in large unit trains. In recent years, train accidents involving a flammable material release and resulting fire with severe consequences have occurred with increasing frequency (i.e. Arcadia, OH, Plevna, MT, Casselton, ND, Aliceville, AL, Lac-Mégantic, Quebec).

Shippers and rail companies are not insured against the full liability of the potential consequences of incidents involving hazardous materials. As a result, these events impose externalities. Among Class I railroads, a self-insured retention of $25 million is common, though it can be as much as $50 million, especially when PIH/TIH material is involved. Smaller regional and short line carriers, i.e., Class II and Class III railroads, on the other hand, typically maintain retention levels well below $25 million as they usually have a more conservative view of risk and usually do not have the cash-flow to support substantial self-insurance levels. At this time, the maximum coverage available in the commercial rail insurance market appears to be $1 billion per carrier, per incident.[18] While this level of insurance is sufficient for the vast majority of accidents, it appears that no amount of coverage is adequate to cover a higher consequence event. One example of this issue is the incident that occurred at Lac Mégantic, Quebec, in July of 2013. The rail carrier responsible for the incident was covered for a maximum of $25 million in insurance liability, and it had to declare bankruptcy because that coverage and the companies remaining capital combined were insufficient to pay for more than a fraction of the harm that was caused. This is one example where rail carriers and shippers may not bear the entire cost of "making whole" those affected when an incident

[17] Information regarding oil and gas production is available at the following URL: *http://www.eia.gov/petroleum/drilling/#tobs-summory-2.*

[18] *See* "The Transportation of Hazardous Materials: Insurance, Security, and Safety Costs," DOT Report to Congress, December 2009, at *http://www.dot.gov/office-policy/transportotion-hozordous-moterials-insurance-security-and-safety-costs.*

involving crude and ethanol shipment by rail occurs.

FRA believes that the failure to secure equipment decreases the safe transportation of goods by rail, and increases the possibility of a higher-consequence event, particularly when dealing with a key train transporting a material such as crude oil. It is difficult to assess how much of the decrease in safety is from railroads not requiring their employees to secure equipment or from employees failing to comply with railroad securement requirements. The Lac-Mégantic accident shows that the railroads were not successful using operating rules in effect at the time of the accident, perhaps because an employee did not follow those rules or might not have had adequate guidance on what constituted adequate securement. FRA believes that use of its authority will enhance compliance with railroad issued orders. There may also have been an issue of incomplete information—which can cause a market failure—that was corrected in the wake of the Lac-Mégantic accident and Emergency Order 28, in that railroads had not yet developed the procedures required in response to Emergency Order 28. This problem of incomplete information related to securement procedures has been addressed, so it is not part of the baseline. Finally, incomplete information also may be causing a market failure among some railroads that have not put locks on their locomotives left outside yards.

Cost-Benefit Analysis of Individual Sections

Following is a discussion of the regulatory costs and benefits associated with each proposed requirement.

Proposed changes to the definition in § 232.5 have no substantive impact and do not result in any new costs or benefits.

Proposed changes to § 232.103(n)(2) will have negligible impact or real burdens, but may increase compliance with existing rules. As noted above, the changes being proposed to this paragraph merely clarify FRA's longstanding interpretation, application, and enforcement of the existing regulation.

Proposed § 232.103(n)(6) lists types of trains and equipment covered by proposed § 232.103(n)(7) and (n)(8), but does not directly impose any specific requirements.

Proposed § 232.103(n)(7)(i) prohibits leaving affected equipment unattended on a main track or siding (except when that main track or siding runs through, or is directly adjacent to a yard) until the railroad has adopted and is complying with a plan identifying specific locations or circumstances when the equipment may be left unattended. Railroads already have developed and implemented such plans under Emergency Order 28, so there is no cost to create such plans. The initial revision and notification burden would have been in identifying safety rationale related to such locations and circumstances, but that has already been accomplished through compliance with Emergency Order 28. To the extent that railroads further revise their plans in the future, there will be some additional costs. This will not occur frequently, resulting in nominal burden in the future.

Proposed § 232.103(n)(7)(ii), an expansion of Emergency Order 28 that applies to trains left unattended on main tracks that are in or adjacent to yards, requires trains left in yards to have the locomotive cab locked, or the reverser removed, if possible, but would not impose additional requirements in a yard if the locking mechanism is inoperative. This portion of the proposed requirement is part of long-standing railroad business practices, and will add no costs or benefits.

In proposed paragraph (n)(8)(i), there is a new proposed requirement, which in almost all cases was already in place as a business practice. It requires that the qualified individual who secures the train verify with a second qualified individual that the train has been secured in accordance with the railroad's operating rules, including whatever the employee has done to ensure that an adequate number of hand brakes have been employed. On a train with two or more crew members, the train crew will verify among themselves. This would happen as a matter of business practice. In the event that the train is secured by a single person crew, the verification would involve a second person, typically a yardmaster, who is also qualified. All safety-critical activities by train crews are communicated to at least one additional person as a standard operating practice. This is part of the railroads' conscious effort to avoid a single point human factor failure that can cause an accident. FRA believes that less than one-tenth of one-percent (0.1%) of the affected trains will be operated by a single crew member when securing in a yard, because there are very few single person crews operating affected trains, and because many affected trains will be operated continuously to their destination. Some trains will be secured outside of yards, but that burden is discussed below in this analysis. In this analysis, FRA assumes that there will be 1,000 affected trains per day, of which 0.1% (1 daily or 365 annually) would have a single person crew. Further, FRA assumes that in the absence of the proposed rule, 95 percent of railroads would require the verification as a business practice. This means that over 20 years, only 365 trains would be affected. FRA believes the communication will take 15 seconds of two qualified individuals' time, or 30 labor seconds. There is no cost to initiate communication, because in any event a person leaving a train would have to communicate with the yardmaster to let the yardmaster know where the crew member left the train and to let the yardmaster know the train would no longer be moving in the yard. Over the 20-year life, the undiscounted value would be 182.5 labor minutes or roughly 3 labor hours. At $50 per hour the cost over 20 years, undiscounted cost would be $150, and the annual cost would only be $7.50. FRA requests comments on the current and future levels of train operations impacted and the labor estimates associated with compliance.

Proposed § 232.103(n)(8)(i) requires that where a freight train or standing freight car or cars as described in proposed paragraph (n)(6) is left unattended on a main track or siding outside of a yard, an employee responsible for securing the equipment shall verify with another person qualified to make the determination that the equipment is secured in accordance with the railroad's processes and procedures. This will impose no new burden nor create any new benefit since it is identical to what is currently required by Emergency Order 28. Where train crews with more than one crew member are involved, then the crew members would need to discuss the securement and ensure that they had secured the correct number of hand brakes and taken other steps to properly secure the train. Where single member crews are involved, then the crew member would have to call the dispatcher or some other qualified railroad employee to verify with the qualified employee that the train had been properly secured. As noted above, Emergency Order 28 requires this communication to occur presently, thus railroads already have these procedures established and continuing such practice will not impose an additional cost. Thus, the proposed changes to § 232.103(n) would create no new benefits or costs, compared to the base case.

Proposed § 232.103(n)(8)(ii) requires that the controlling locomotive cab of a freight train described in paragraph

(n)(6) shall be locked on locomotives capable of being locked or the reverser on the controlling locomotive shall be removed from the control stand and placed in a secured location. In the case of a locomotive with an operative lock, the compliance will simply be locking the lock. Railroads all require their employees to lock unattended locomotives equipped with operative locks, for both safety and security reasons. This provision of the proposed rule codifies current business practices, and creates no new benefits or costs. Under proposed § 232.105(h) each locomotive will have been equipped with a lock, and if there should be a lock malfunction, removing the reverser will be sufficient to comply. Removing the reverser of such a locomotive is likely to be a business practice required by operating rules except for two conditions. The first condition is where the locomotive does not have a removable reverser. Such locomotives are relatively old and are rarely used outside of yard operations. The second condition is where there is a reason to keep the locomotive running while standing. Almost all locomotives can idle with the reverser removed, but there are no locomotives that can run at speeds above normal idle, sometimes needed for cold weather conditions, with the reverser removed. If a lock should malfunction under either of those two conditions, a railroad could comply by several means:

- A railroad could remove the reverser; almost all locomotives can idle with the reverser removed, except in very cold weather;
- A railroad could attend the locomotive, which could involve either placing a qualified individual aboard the locomotive while it stands, or boarding a new crew and having the new crew continue moving the train toward its destination. The most economical way to accomplish this would be to board a new crew and take the train further along its route. The railroad was going to have to call a crew to move the train on its route anyway, so if the railroad has sufficient time to call a new crew, generally two hours, the railroad would call a crew earlier than originally planned. Dispatchers continually adjust the flow of trains, and adding a single train earlier than originally planned would have little effect on operations in almost all cases. If the train is already close to its destination this would not be practical if the consignee unloading or transfer operation were not available, or if the train could not proceed for some other reason, such as track congestion or blockage, the railroad would not simply board the next crew and the railroad would have to comply by some other means;
- A railroad could arrange for the train to stop in a yard, or on a main track in or adjacent to a yard. This might involve having the dispatcher expedite the train so it can make a yard further along its route, which might have little cost;
- A railroad could have the train crew switch locomotives, putting a lock-equipped locomotive in the lead, which would be costly and impractical; or
- A railroad could arrange to have the lock repaired before leaving the train unattended, which would also carry a cost.

The burdens of proposed § 232.103(n)(8)(ii) on main track or sidings outside of yards are imposed by Emergency Order 28, so they are not new burdens, and they still are relatively small. For purposes of this analysis, FRA conservatively estimates that 1,000 trains per day [19] will be subject to the proposed requirements of § 232.103(n)(8)(ii), but that 90 percent of them will be excepted under proposed § 232.103(n)(8)(iii), because they will have routing that calls for unattended stops only in or adjacent to yards.[20] That leaves 100 trains per day, or 36,500 trains per year. FRA estimates that one in 500 locomotives or 73 per year will have a defective lock. FRA also estimates that 50 percent, or 36.5 per year, would have been left running while unattended, or would have been equipped with a non-removable reverser. A locomotive would be left running either to avoid cold weather starting or to avoid a brake test when the next crew takes charge of the train. If the locomotive would have been left running to maintain brake pressure, the train crew can leave one of the trailing locomotives running to maintain brake pressure, and lock its door. FRA estimates that in all but ten cases per year, the railroad will have been notified of the lock malfunction, and will have the next crew or current crew take the train to a yard or its destination, avoiding any costs.[21]

Trains per year:
Affected by the proposed rule: 365,000
No planned stop outside yards (90 percent of 365,000): 328,500
Planned stop outside yards (365,000–328,500): 36,500
Defective lock and planned stop outside yard (36,500/500): 73
Removing reverser provides compliance (50 percent of 73): 36.5
Further action needed (73–36.5): 36.5
Sent on to next yard or destination: 26.5
Remedial action must be taken: 10 [22]

FRA believes that in half the cases remaining (five cases), the railroad will repair or replace the lock, and in the other half (also five cases), the railroad will have personnel attend a standing train. The railroad may repair or replace the lock, in which case the cost is the additional cost of repairing the lock outside of a yard. A railroad using AAR standard locks may attach an additional locking mechanism, not compliant with AAR standards until the AAR standard lock can be replaced. This appears to be the lowest cost means of complying with the rule. If a hasp is present, the railroad may have provided the crew with a spare lock, in which case the cost is negligible, two of the five cases per year. If a hasp is not present, the railroad may have repair personnel locate to the train, estimated at an average cost of $0.56 per mile for 20 miles, or $11.20 per incident. In addition, the installation is expected to require two hours service time, including travel, for two repair personnel, at an estimated cost of $50 per person hour,[23] for a labor cost of $200. The installation is expected to cost $100 if the railroad does not install a standard lock, one case per year. The total cost for this repair would be $11.20 for transportation, $100 for materials, plus $200 for labor, a total of $311.20. If the railroad replaces the existing lock, then no materials cost is added, because the railroad could have been expected to replace the lock at the next yard. The total cost to replace an existing lock would be $11.20 for transportation, plus $200 for labor for a total of $211.20. The total cost to replace existing locks is 2 times $211.20, or $422.40. The total cost for lock replacement includes the negligible costs if the crew has a lock that fits an existing hasp, plus $311.20

[19] In an analysis of the safety of HHFTs, PHMSA estimates that there are 150 trains per day. FRA's estimate of 1,000 trains per day is conservative.

[20] FRA assumes that railroads will fix locks in or adjacent to the first yard available, as a business practice, and will leave any unattended trains in yards locked.

[21] Taking the train further along its route is the least costly method of attending a train. The railroad is obligated to provide a crew to move the train further along its route anyway, and train crews are on call. Once the train gets to the first yard on its path, the lock will be repaired. Unloading facilities are not part of the railroad, and FRA does not regulate securement at unloading facilities, which are subject instead to PHMSA regulations.

[22] FRA requests comment on the number of cases per year where remedial action would be required, and on the assumptions relied upon to estimate that number.

[23] Surface Transportation Board (STB) wage data show that the average compensation for personnel engaged in Maintenance of Equipment & Stores was $28.46 in 2013. FRA adds a 75 percent burden which would yield $49.81 per hour, which is rounded here to $50 per hour.

to install a new hasp and lock, plus $422.20 to replace existing locks, a total of $733.60. In any estimate of net present value, the labor costs for lock installation should not be incremented by a factor to account for growth in real wages, because the growth in real wages is assumed to be directly related to productivity. The more productive the worker, the fewer hours needed to install a lock, including reductions in time needed to travel. FRA believes that small railroads will not be affected by these costs because small railroads will use a lock and hasp system and will be able to replace the lock before the train is left stopped, should the lock malfunction.

FRA estimates the cost to switch locomotives at $150 for the cost of switching and at least $500 for a brake test after switching, for a total of $650 per train. A railroad is unlikely to do this unless the purpose of keeping engines running was to keep the engines warm on a cold day, no stop was likely at a location where the lock could be repaired, and at least one more stop was likely on the train's route. The likelihood of such a situation is so small as to be negligible. FRA does not believe this is a likely response, and this value is not used any further.

FRA estimates the cost to attend a standing train at $470 per incident,[24] or a total of $2,350 per year for 5 incidents, which assumes a burdened rate for labor of $51.04 per hour.

In summary of the foregoing costs associated with locomotive locks, FRA believes the likely responses to inoperative locking mechanisms, where the railroad cannot simply remove a reverser or move the train, will break down as follows:

Approach taken	Unit cost	Frequency	Annual total cost
Place Lock in Existing Hasp	$0.00	2	$0.00
Install New Hasp and Lock	311.20	1	311.20
Replace Existing Lock	211.20	2	422.40
Attend Train	470.00	5	2,350.00
Total			[25] 3,083.60

The total cost imposed by proposed section 232.103(n)(8)(ii) would be $2,350 plus $311.20 plus $411.40 per year, a total of $3,083.60, or roughly $3,100, per year.

To more accurately annualize these costs, however, FRA must also consider the direct wage portion of the costs attending trains and provide for annual real wage increases. Of the aforementioned burdened wage rate, $29.16 is the direct wage portion. Multiplying the direct wage portion hourly rate against 9 hours pay per event with 5 events per year, the direct wage portion annual cost total is $1,312.33, which we will round to $1,300. These direct wage costs for train personnel will need to be incremented by a factor of 1.18 percent per year to account for increases in real wage, induced by increased productivity in accordance with estimates from the Congressional Budget Office.[26]

FRA compiled the following summary table, using initial annual costs of $3,100 (i.e., the first year's annual locomotive locks costs total rounded up), broken into direct wage costs for simply attending trains, $1,300—which are increased every year by 1.18 percent to account for growth in real wages, whereas the first year's increase would result in a direct wage cost of $1,315.34—and other costs of $1,800, including initial burden on wages to attend trains, labor costs to repair or replace locks, where productivity growth is assumed to match growth in real wages, and costs for other items. The costs are all the result of actions taken to comply with attendance of a train in the event a locking mechanism becomes inoperative:

Year	Wage inflator (percent)	Direct wage cost	All other costs	Discounted value		
				Total costs	Discount factor	
					7%	3%
2015	101.18	$1,315.34	$1,800	$3,115.34	$3,115	$3,115
2016	102.37	1,330.86	1,800	3,130.86	2,926	3,040
2017	103.58	1,346.57	1,800	3,146.57	2,748	2,966
2018	104.80	1,362.45	1,800	3,162.45	2,582	2,894
2019	106.04	1,378.53	1,800	3,178.53	2,425	2,824
2020	107.29	1,394.80	1,800	3,194.80	2,278	2,756
2021	108.56	1,411.26	1,800	3,211.26	2,140	2,689
2022	109.84	1,427.91	1,800	3,227.91	2,010	2,625
2023	111.14	1,444.76	1,800	3,244.76	1,888	2,561
2024	112.45	1,461.81	1,800	3,261.81	1,774	2,500
2025	113.77	1,479.06	1,800	3,279.06	1,667	2,440
2026	115.12	1,496.51	1,800	3,296.51	1,566	2,381
2027	116.47	1,514.17	1,800	3,314.17	1,472	2,324
2028	117.85	1,532.04	1,800	3,332.04	1,383	2,269
2029	119.24	1,550.11	1,800	3,350.11	1,299	2,215
2030	120.65	1,568.40	1,800	3,368.40	1,221	2,162

[24] STB wage data show that the average compensation for personnel engaged in Train, Yard and Engine was $29.16 in 2013. FRA adds a 75 percent burden which would yield $51.04 per hour. The minimum payment for qualified personnel called out is a fixed sum or hourly pay, whichever is greater. The fixed amount is roughly equal to 8 hours' pay. There may be instances where the duration of the assignment exceeds 8 hours. FRA assumed a 9 hour average pay, or 9 times $51.04, for a burdened wage of $459.32 per incident. FRA further assumed $11.20 in travel costs, or a total cost of $470.52 per incident, which FRA rounded to $470 per incident.

[25] Rounds to $3,100.

[26] Based on real wage growth forecasts from the Congressional Budget Office, DOT's guidance estimates that there will be an expected 1.18 percent annual growth rate in median real wages over the next 30 years (2013–2043).

Year	Wage inflator (percent)	Direct wage cost	All other costs	Discounted value		
				Total costs	Discount factor	
					7%	3%
2031	122.07	1,586.91	1,800	3,386.91	1,147	2,111
2032	123.51	1,605.64	1,800	3,405.64	1,078	2,060
2033	124.97	1,624.58	1,800	3,424.58	1,013	2,012
2034	126.44	1,643.75	1,800	3,443.75	952	1,964
Total					36,685	49,909
Annualized					3,236	3,257

Proposed § 232.103(n)(8)(ii) also provides a direct safety benefit of this rulemaking. Only about 36.5 trains per year are likely to be affected, as described above. FRA believes that in the absence of this rulemaking all locomotives would be equipped with locks as a business practice, as described below. FRA believes that as a business practice, the locomotives that can be locked will be locked, and the remaining locomotives that have reversers that can be removed that are not left running would have their reversers removed and secured. FRA believes that trains left running with reversers in place are the most vulnerable to serious harm as a result of casual mischief. It is possible that a vandal moving a reverser in an unattended running locomotive could cause a higher-consequence event, given the kinds of materials regulated here. Further, individuals who believe they are doing some good—for example first responders who believe the train is in a dangerous location—may also be tempted to try to move the train. If they lack proper skills, this movement creates a risk. FRA does not have a good way to estimate the likelihood of a serious event from such a small number of affected trains; however, given the kinds of trains involved, FRA finds that the costs are justified by the benefits of risk reduction.

Proposed § 232.103(n)(8)(iii) provides an exception for trains left unattended on main tracks in or adjacent to yards, and does not change burdens from Emergency Order 28. The communication requirement in proposed § 232.103(n)(9), is unchanged from Emergency Order 28, and will impose no new burden nor create any new benefit for train crews with more than one crew member. Proposed § 232.103(n)(10) requires railroads to adopt and comply with procedures to ensure that, as soon as safely practicable, a qualified employee verifies the proper securement of any unattended equipment when the railroad has knowledge that a non-railroad emergency responder has been on, under, or between the equipment. This was required by Emergency Order 28 and remains unchanged from Emergency Order 28, and will impose no new burden nor create any new benefit. FRA also believes that after the Lac Mégantic accident that railroads would have adopted this practice even in the absence of Emergency Order 28, as a standard business practice, so FRA is confident that this section creates no new benefits or costs.

One requirement of Emergency Order 28 that is not included in the proposed rule is a requirement that employees who are responsible for securing trains and vehicles transporting Appendix A Materials must communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured; train dispatchers must record the information provided; and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements. The proposed rule includes verification procedures but does not include the recordkeeping required by Emergency Order 28. FRA's Paperwork Reduction Act analysis of the recordkeeping requirements shows the annual burden at 867 hours to notify the dispatcher to make the record, and an additional 867 hours to make the record. FRA estimates that there will be an average of 26,000 communications (100 instances on 260 days per year) to dispatchers triggering the recording requirement, which takes an average of four minutes to complete, for a total of 1,734 hours. If the value of the employees' time is $50 per hour, the annual cost of the Emergency Order 28 recordkeeping requirement is $86,700, and that cost would be eliminated by the proposed rule. FRA believes the recordkeeping requirements have been relatively more onerous for smaller railroads, but does not have a breakdown of the proportion of the cost reduction benefit that will accrue to small railroads.

Proposed § 232.105(h) requires, after March 1, 2017, that each locomotive left unattended outside of a yard shall be equipped with an operative exterior locking mechanism. AAR standard S–5520 requires that each locomotive left unattended outside of a yard shall be equipped with an operative exterior locking mechanism, and requires that locomotives be equipped in order to be used in interchange service. These mechanisms will meet the requirements of proposed § 232.105(h). FRA believes that for Class I and Class II railroads, all costs and benefits of proposed § 232.105(h) will be a result of business practices because their locomotives operate in interchange service. These railroads are already in the process of installing exterior locking mechanisms on all of their locomotives that do not operate exclusively in yard service. FRA further believes that small railroads have already equipped virtually all of their locomotives with exterior locking mechanisms. This was discussed at RSAC meetings.

FRA believes that the reason Class I and Class II railroads have just recently started installing locking mechanisms on their locomotives is that until recently there was no standard for keying the locking mechanisms. Locomotives of these railroads operate in interchange service and can move from railroad to railroad. If each railroad had to maintain a set of keys for all other railroads' locomotives, that would have been cumbersome. The recent, common keyed, industry standard provides a solution, and allows the business practice of installing locking mechanisms to proceed.

FRA believes that, for smaller railroads, locking locomotive cabs is a good business practice that already takes place because it avoids vandalism and locomotive cab intruders. Several reports indicate that a locomotive belonging to the Adirondack Scenic Railroad was vandalized on or around

October 15, 2013.[27] Damage to the locomotive was approximately $50,000, and does not include lost revenue. Anecdotal reports are that the vandals removed the copper wiring, which has value as scrap. This event was not reported to FRA. This is an example of unreported vandalism, and FRA staff believes that a great deal of vandalism is unreported, largely because the events do not meet all the requirements that would result in filing an accident/incident report with FRA. Over the years, FRA staff has received several first-hand accounts of vandalism or cabs occupied by intruders. FRA believes that the likelihood of vandalism or cabs being occupied by trespassers increases as the likelihood of railroad observation of the train decreases. Most small railroads operate in environments with a lower than average likelihood of observation. FRA believes that vandalism is also more likely to have a severe impact on a small railroad's operations since these railroads do not have many spare locomotives or personnel. If a railroad has ten locomotives and five get vandalized, its operations will be severely impacted. Likewise if a small railroad's operating crew is injured by an intruder in a cab, the operations for that day will likely be halted. As indicated by small railroad representatives at RSAC, small railroads do generally equip their locomotives with exterior cab locks. FRA believes that if all small railroads considered the impacts of vandalism and intruders, the small railroads would and have installed exterior cab locks.

The unit cost for a locking mechanism meeting AAR standard S–5520 is $215. FRA believes that smaller railroads could comply with proposed § 232.105(h) with a simpler lock and hasp system, for a unit cost of $100. FRA requests comment regarding this estimate. Given the smaller number of locomotives, personnel, territory, and facilities, use of this type of system would not be problematic.

FRA believes that no more than 500 locomotives belonging to Class III railroads lack locking mechanisms that comply with proposed § 232.105(h). Thus, the cost to install the locking mechanisms would be no more than 500 times $100, or $50,000.

Based on anecdotal information from FRA staff, between 1 percent and 3 percent of locomotives are vandalized each year. Some vandalism is relatively minor, such as graffiti sprayed on the walls of the cab, but some is much more serious, for example damage or removal of electrical equipment, or of instruments. More modern cabs have very expensive control systems, with one or more monitor screens. It would not be difficult for vandals to cause more than $50,000 in damage to a modern cab. The repairs not only would involve removal and replacement of damaged components, but would also involve calibration. For purposes of this analysis, FRA is assuming 1 percent of locomotives would be vandalized each year if not equipped with locks, and the mean cost of a vandalism incident is $3,000. The expected cost of vandalism is therefore $30 per locomotive year for unequipped locomotives.

Locomotive cabs are also occupied by unauthorized occupants, usually homeless, from time to time. Based on staff anecdotal data, FRA assumes that five percent of locomotive cabs are occupied at least once per year. FRA believes that the cost per incident is $100, including costs to clean debris and inspect to determine that nothing in the cab has been damaged. This cost represents 20 minutes delay with a train delay cost. The economic impact of slowing trains depends upon multiple factors including other types of trains, other train speeds, dispatching requirements, work zones, and topography. Looking at numerous variables, for purposes of another analysis, DOT estimated the average cost of a train delay to be $500 per hour.[28] This cost estimate was determined by reviewing costs associated with crew members, supply chain logistic time delays based on various freight commodities, and passenger operating costs for business and other travel. It is reasonable to assume that delays to smaller railroad operations are lower in cost. Thus, for purposes of this analysis, for the impacted railroads, FRA is using an hourly train delay cost of $300 per hour. FRA requests comment regarding this assumption. Thus the cost per year for 500 locomotives would be 500 times 5 percent times $100, or $2,500, or $5 per locomotive year. Added to the vandalism cost the total cost of exposure would be $35 per locomotive year. If an installation of a locking mechanism costs $100, it would take less than 3 years for the locks to pay for themselves (before applying discount factors). FRA believes that in the absence of this rule most small railroads would apply locking mechanisms to locomotives left unattended outside of yards, especially in light of the vandalism incident on the Adirondack Scenic Railroad. FRA believes the net cost of installing and using the locks for small railroads is zero because the installation cost is offset by the business benefits.

FRA assumes the locks will be purchased in the first year, because the business benefit is apparent. Thus, the costs are $100 times 500 locomotives, or $50,000, the same at both discount rates because 2015 is not discounted.

Year	Total costs	Discounted value	
		Discount factor	
		7%	3%
2015	$50,000.00	$50,000	$50,000
Total	50,000.00	50,000	50,000
Annualized	.....	4,411	3,263

A more serious crime with far more potential to cause harm off the railroads' rights-of-way is theft and operation of a train. In 1975, two teenagers stole a switching locomotive and operated it until it crashed.[29] FRA staff has received

[27] Adirondack Scenic Railroad Locomotive Vandalized, North County Public Radio Web site, October 15, 2013.

[28] PHMSA's proposed rule "Hazardous Materials: Enhanced Rail Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" applies a $500 per hour estimate of the cost of delay for the rail network overall. 79 FR 45015 (Aug. 1, 2014).

[29] Pierce Haviland, The Putnam Division, last updated November 10, 2010, *available at http://piercehaviland.com/rail/putnam.html This incident was probably not reportable because it occurred on an abandoned railroad, no longer part of the general system of rail transportation.*

anecdotal information regarding other locomotives being stolen and operated, but permanent records of the incidents could not be found. If a train described in proposed § 232.103(n)(6) was stolen and operated, it could easily cause the kinds of harm seen at in the Graniteville, South Carolina accident and the Lac Mégantic incident, with societal costs of $260 million to $1.2 billion. The Lac Mégantic incident is illustrative of, but not necessarily the outer limit of, a high-consequence event scenario for derailment of a paragraph (n)(6) train. The derailment occurred in a small town with a low population density by U.S. standards, but resulted in the deaths of 47 people and the destruction of much of the downtown area. A year after the event, decontamination of the soil and water/sewer systems is still ongoing. Cleanup of the lake and river that flows from it has not been completed, and downstream communities are still using alternative sources for drinking water. Initial estimates of the cost of this event were roughly $1 billion, but the cleanup costs have doubled from initial estimates of $200 million to at least $400 million, and the total cost to clean up, remediate, and rebuild the town could rise as high as $2.7 billion. The frequency and magnitude of these events is highly uncertain. It is, therefore, difficult to predict with any precision how many of these higher consequence events may occur over the coming years, or how costly these events may be. In the worst case scenario for a fatal event, the results could be several times the damages seen at Lac Mégantic both in loss of life and other associated costs.

In estimating the damages of a higher-consequence event, we begin with the current estimated damages of Lac Mégantic. We used this accident to illustrate the potential benefits of preventing or mitigating events of this magnitude. It is challenging to use this one data point to model potential damages of higher consequence events that differ in nature from the Lac Mégantic accident. However, as the volume of crude oil shipped by rail continues to grow, it is reasonable to assume that events of this magnitude may occur.

By installing locks to avoid such dangers, the benefits indicated in the following table are $17,500 per year ($35 times 500 locomotives), starting in 2016, the year after the locks are installed.

Year	Total benefits	Discounted value	
		Discount factor	
		7%	3%
2015	$0.00	$0	$0
2016	17,500.00	16,355	16,990
2017	17,500.00	15,285	16,495
2018	17,500.00	14,285	16,015
2019	17,500.00	13,351	15,549
2020	17,500.00	12,477	15,096
2021	17,500.00	11,661	14,656
2022	17,500.00	10,898	14,229
2023	17,500.00	10,185	13,815
2024	17,500.00	9,519	13,412
2025	17,500.00	8,896	13,022
2026	17,500.00	8,314	12,642
2027	17,500.00	7,770	12,274
2028	17,500.00	7,262	11,917
2029	17,500.00	6,787	11,570
2030	17,500.00	6,343	11,233
2031	17,500.00	5,928	10,905
2032	17,500.00	5,540	10,588
2033	17,500.00	5,178	10,279
2034	17,500.00	4,839	9,980
Total		180,873	250,666
Annualized		15,956	16,358

In addition to the above noted benefits, the proposed rule itself reduces costs—by removing the requirement to record securement activities provided under Emergency Order 28—by $86,700 per year, with no decrease in safety. In FRA's view, these savings more than offset the minor costs associated with the proposed rule.

Year	Total benefits	Discounted value	
		Discount factor	
		7%	3%
2015	$86,700.00	$86,700	$86,700
2016	86,700.00	81,028	84,175
2017	86,700.00	75,727	81,723
2018	86,700.00	70,773	79,343
2019	86,700.00	66,143	77,032
2020	86,700.00	61,816	74,788
2021	86,700.00	57,772	72,610
2022	86,700.00	53,992	70,495

Year	Total benefits	Discounted value	
		Discount factor	
		7%	3%
2023	86,700.00	50,460	68,442
2024	86,700.00	47,159	66,448
2025	86,700.00	44,074	64,513
2026	86,700.00	41,191	62,634
2027	86,700.00	38,496	60,810
2028	86,700.00	35,977	59,038
2029	86,700.00	33,624	57,319
2030	86,700.00	31,424	55,649
2031	86,700.00	29,368	54,029
2032	86,700.00	27,447	52,455
2033	86,700.00	25,651	50,927
2034	86,700.00	23,973	49,444
Total		982,796	1,328,573
Annualized		86,700	86,700

FRA calculated the total monetized costs of the rule, with the costs for locomotive lock installation accounted for only for the first year:

Year	Wage inflator (percent)	Direct wage cost	All other costs	Total costs	Discounted value	
					Discount factor	
					7%	3%
2015	101.18	$1,315.34	$51,800	$53,115.34	$53,115	$53,115
2016	102.37	1,330.86	1,800	3,130.86	2,926	3,040
2017	103.58	1,346.57	1,800	3,146.57	2,748	2,966
2018	104.80	1,362.45	1,800	3,162.45	2,582	2,894
2019	106.04	1,378.53	1,800	3,178.53	2,425	2,824
2020	107.29	1,394.80	1,800	3,194.80	2,278	2,756
2021	108.56	1,411.26	1,800	3,211.26	2,140	2,689
2022	109.84	1,427.91	1,800	3,227.91	2,010	2,625
2023	111.14	1,444.76	1,800	3,244.76	1,888	2,561
2024	112.45	1,461.81	1,800	3,261.81	1,774	2,500
2025	113.77	1,479.06	1,800	3,279.06	1,667	2,440
2026	115.12	1,496.51	1,800	3,296.51	1,566	2,381
2027	116.47	1,514.17	1,800	3,314.17	1,472	2,324
2028	117.85	1,532.04	1,800	3,332.04	1,383	2,269
2029	119.24	1,550.11	1,800	3,350.11	1,299	2,215
2030	120.65	1,568.40	1,800	3,368.40	1,221	2,162
2031	122.07	1,586.91	1,800	3,386.91	1,147	2,111
2032	123.51	1,605.64	1,800	3,405.64	1,078	2,060
2033	124.97	1,624.58	1,800	3,424.58	1,013	2,012
2034	126.44	1,643.75	1,800	3,443.75	952	1,964
Total					86,685	99,909
Annualized					7,647	6,520

FRA calculated the total monetized benefits of the rule, which includes savings from relief of Emergency Order 28's recordation requirement for each year plus savings provided each year from the use of locomotive locks after the first year of installation:

Year	Total benefits	Discounted value	
		Discount factor	
		7%	3%
2015	$86,700.00	$86,700	$86,700
2016	104,200.00	97,383	101,165
2017	104,200.00	91,012	98,218
2018	104,200.00	85,058	95,358
2019	104,200.00	79,494	92,580
2020	104,200.00	74,293	89,884

Year	Total benefits	Discounted value	
		Discount factor	
		7%	3%
2021	104,200.00	69,433	87,266
2022	104,200.00	64,891	84,724
2023	104,200.00	60,645	82,256
2024	104,200.00	56,678	79,861
2025	104,200.00	52,970	77,535
2026	104,200.00	49,505	75,276
2027	104,200.00	46,266	73,084
2028	104,200.00	43,239	70,955
2029	104,200.00	40,411	68,888
2030	104,200.00	37,767	66,882
2031	104,200.00	35,296	64,934
2032	104,200.00	32,987	63,043
2033	104,200.00	30,829	61,207
2034	104,200.00	28,812	59,424
Total	.....	1,163,669	1,579,240
Annualized	.....	102,656	103,058

Summary of the Costs and Benefits

To summarize the above identified costs and benefits, FRA tabulated the contributions of each item to the total discounted costs and benefits over 20 years.

Discounted values	Discounted value	
	Discount factor	
	7%	3%
Costs:		
Attending Trains	$36,685	$49,909
Installing Locks	50,000	50,000
Total Costs	86,685	99,909
Benefits:		
Reduced Vandalism	180,873	250,666
Reduced Recordkeeping	982,786	1,328,573
Total Benefits	1,163,669	1,579,240

For further distillation, FRA calculated the net benefits over 20 years:

Discounted values net benefits	Discounted value	
	Discount factor	
	7%	3%
Total	$1,076,984	$1,479,331
Annualized	95,009	96,538

FRA could eliminate Emergency Order 28, but most of the requirements of Emergency Order 28 conform to business practices of the railroads.

The costs that are not directly offset by a monetized benefit are the annual costs of either attending locomotives or expediting their repair. Above, FRA estimates the annualized cost beyond current business practices at $3,236–$3,257 per year.[30] These costs are balanced against an incident with costs of $260 million to $1.2 billion, but with extremely low probability. The incidents avoided by attendance provisions would only occur where the train was not equipped with functioning locking mechanisms under conditions where the railroad would have sent a repair team out to the location of the train to repair the locking mechanism or would have sent a qualified employee to attend the train, roughly ten events per year. As discussed above, these situations would involve a locomotive that is left running either to avoid cold weather starting or to avoid a brake test when the next crew takes charge of the train. The number of events estimated is based on professional judgment. If the

[30] This cost is slightly increased by the increase in value of real wages over time.

event avoided is $330 million,[31] and the annual cost is less than $3,300 for ten events, then the rule costs about $330 per event and would roughly break even if one in a million events of leaving a locomotive consist for one of the regulated trains unattended with an unlocked cab and a reverser unsecured in the cab were to result in a higher-consequence incident. FRA believes the small but relatively predictable annual cost is justified by the hard to measure very small probability, very high consequence incident risk avoided. The portion of the rule requiring attendance of a train with inoperative locking mechanisms will not affect the likelihood of such an incident where the locking mechanism is functioning or where railroad does not comply with the proposed rule.

The remainder of Emergency Order 28 and the proposed rule do not impose costs beyond expected business practices. FRA believes that the business benefits of installing locking mechanisms and locking locomotive cabs return net benefits to the railroads. FRA believes that locking the locomotive cab or removing the reverser will reduce the likelihood of a higher-consequence event. FRA believes the continuing requirements from Emergency Order 28 or the requirements of the proposed rule will sever the potential causal chain of a low-probability high-consequence event. Thus, FRA rejects the alternative of simply removing Emergency Order 28.

Alternatives Considered

FRA considered as an alternative requiring all trains subject to proposed § 232.103(n)(6) to be attended if left stopped outside yards, without regard to the presence of a locking mechanism or reverser. FRA believes that railroads would work to enhance routing and crew scheduling so that of the 1,000 affected trains per day, only 50 would require unattended stops outside of yards. The cost per event to attend a train would be $470 per incident. The daily cost would be 50 times $470, or $23,500. The annual cost would be $8,577,500.

FRA believes the proposed rule is as effective as the alternative considered, at much lower cost. Thus, FRA rejected the more restrictive alternative. FRA further believes that given the tradeoff between the certainty of relatively low costs and the benefit of very low-probability yet very high-consequence incidents, the proposed rule is a reasonable approach. FRA requests comments on all aspects of this analysis.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the impact of this rulemaking on small entities is properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

As discussed in the preamble above, FRA is proposing to amend regulations affecting securement of certain trains carrying particular hazardous materials in particular quantities, and requiring that cabs of all locomotives left unattended, except for those left unattended on main tracks that are in or adjacent to yards, be equipped with locking mechanisms. FRA is certifying that this proposed rule will result in "no significant economic impact on a substantial number of small entities." The following section explains the reasons for this certification.

1. Description of Regulated Entities and Impacts

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the "universe" will be Class III freight railroads that own locomotives or that have traffic including trains that would be subject to proposed § 232.103(n)(6).

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line Haul Operating Railroads" and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. Additionally, section 601(5) defines "small entities" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad.[32] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[33] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of "small entities" for this rule.

FRA believes that virtually all small railroads on the general system of rail transportation will be affected by this rule, as there are almost no railroads that do not own at least one locomotive. There are 671 small railroads on the general system of rail transportation.

As noted above, no small entities are expected to incur any costs under proposed § 232.103. Small entities owning locomotives may incur a cost to install a locking mechanism under proposed § 232.105, but as also noted above, the locking mechanisms will pay for themselves in reduced vandalism costs in less than three years. FRA believes that at least 90 percent of affected locomotives are already equipped with locking mechanisms, and the cost to install a locking mechanism is $100 for a mechanism that does not have to comply with AAR standards for interchange. Any small railroad's locomotives operated in interchange service would have to have AAR compliant locks to remain in interchange service, but that is not a cost of the rule. Thus, the rule will impose a cost of $100 on about ten percent of locomotives, but the investment will pay for itself in less than three years. FRA believes this is not a substantial impact on any small entity.

Further, small railroads will benefit from a reduction in recordkeeping requirements, as described above.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. FRA requests comment on both this

[31] This estimate falls between the damages of Graniteville and Lac-Megantic. It is selected only for illustrative purposes.

[32] *See* 68 FR 24891 (May 9, 2003); 49 CFR Part 209, app. C.

[33] For further information on the calculation of the specific dollar limit, please see 49 CFR Part 1201.

analysis and this certification, and its estimates of the impacts on small railroads.

C. Paperwork Reduction Act

The new information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.27—Annual tests	30,000 locomotives	120,000 tests	15 minutes	30,000 hours.
232.3—Applicability—Export, industrial, & other cars not owned by railroads-identification.	655 railroads	8 cards	10 minutes	1 hour.
232.7—Waivers	655 railroads	10 petitions	160 hours	1,600 hours.
232.15—Movement of Defective Equipment—Tags/Records.	1,620,000 cars	128,400 tags/records	2.5 minutes	5,350 hours
—Written Notification	1,620,000 cars	25,000 notices	3 minutes	1,250 hours.
232.17—Special Approval Procedure.				
—Petitions for special approval of safety-critical revision.	655 railroads	1 petition	100 hours	100 hours.
—Petitions for special approval of pre-revenue service acceptance plan.	655 railroads	1 petition	100 hours	100 hours.
—Service of petitions	655 railroads	1 petition	20 hours	20 hours.
—Statement of interest	Public/railroads	4 statements	8 hours	32 hours.
—Comment	Public/railroads	13 comments	4 hours	52 hours.
232.103—Gen'l requirements—all train brake systems—Stickers.	114,000 cars	70,000 sticker	10 minutes	11,667 hours.
Proposed Rule New Requirements				
232.103(n)(3)(iv)—RR Procedure for Securing Unattended Locomotive.	Already Fulfilled under OMB No. 210–0601.	Fulfilled under OMB No. 210–0601.	Fulfilled under OMB No. 210–0601.	Fulfilled under OMB No. 210–0601.
232.103(n)(7)—RR Plan Identifying Specific Locations or Circumstances where Equipment May Be Left Unattended.	655 railroads	10 revised plans	10 hours	100 hours.
—Notification to FRA When RR Develops and Hast Plan in Place or Modifies Existing Plan.	655 railroads	10 notices	30 minutes	5 hours.
232.103(n)(8)—Employee Verification with Another Qualified Employee of Securement of Freight Train or Freight Car Left Unattended.	Included under Sec. 232.103(n)(9).	Included Under Sec. 232.103(n)(9).	Included under Sec. 232.103(n)(9).	Included under Sec. 232.103(n)(9).
232.103(n)(9)—RR Implementation of Op. Rules/Practices Requiring Job Briefing for Securement of Unattended Equipment.	655 railroads	491 revised rules/practices.	2 hours	982 hours.
—Securement Job Briefings	100,000 Employees	23,400,000 job briefings.	30 seconds	195,000 hours.
232.103(n)(10)—RR Adoption of Procedure for Verification of Securement of Equipment by Qualified Employee—Inspection of Equipment by Qualified Employee after Responder Visit.	655 railroads	100 inspections/records.	4 hours	400 hours.
232.105—General requirements for locomotives—Inspection.	30,000 Locomotives	30,000 forms	5 minutes	2,500 hours.
Proposed Rule New Requirements				
232.105(h)—RR Inspection of Locomotive Exterior Locking Mechanism/Records.	30,000 Locomotives	30,000 insp. records	30 seconds	250 hours.
—RR Repair, where necessary, of Locomotive Exterior Locking Mechanism.	30,000 Locomotives	73 repairs/records	60.25 minutes	73 hours.
232.107—Air source requirements and cold weather operations—Monitoring Plan (Subsequent Years).	10 new railroads	1 plan	40 hours	40 hours.
—Amendments/Revisions to Plan	50 railroads/plans	10 revisions	20 hours	200 hours.
—Recordkeeping	50 railroads/plans	1,150 records	20 hours	23,000 hours.
232.109—Dynamic brake requirements—status/record.	655 railroads	1,656,000 rec	4 minutes	110,400 hours.
—Inoperative dynamic brakes: Repair record.	30,000 locomotives	6,358 records	4 minutes	424 hours.
—Tag bearing words "inoperative dynamic brakes".	30,000 locomotives	6,358 tags	30 seconds	53 hours.
—Deactivated dynamic brakes (Sub. Yrs.).	8,000 locomotives	10 markings	5 minutes	1 hour.
—Operating rules (Subsequent Years)	5 new railroads	5 .rules	4 hours	20 hours.
—Amendments/Revisions	655 railroads	15 revisions	1 hour	15 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Requests to increase 5 mph Overspeed restriction.	655 railroads	5 requests	30 min. + 20 hours	103 hours.
—Knowledge criteria—locomotive engineers—Subsequent Years.	5 new railroads	5 amendments	16 hours	80 hours.
232.111—Train information handling	5 new railroads	5 procedures	40 hours	200 hours.
—Sub. Yrs.—Amendments/Revisions	100 railroads	100 revisions	20 hours	2,000 hours.
—Report requirements to train crew	655 railroads	2,112,000 reports	10 minutes	352,000 hours.
232.203—Training requirements—Tr. Prog.—Sub Yr.	15 railroads	5 programs	100 hours	500 hours.
—Amendments to written program	655 railroads	559 revisions	8 hours	4,472 hours.
—Training records	655 railroads	67,000 record	8 minutes	8,933 hours.
—Training notifications	655 railroads	67,000 notices	3 minutes	3,350 hours.
—Audit program	655 railroads	1 plan + 559 copies	40 hours/1 min.	49 hours.
—Amendments to validation/assessment program.	655 railroads	50 revisions	20 hours	1,000 hours.
232.205—Class 1 brake test—Notifications/Records.	655 railroads	1,646,000 notices/record.	45 seconds	20,575 hours.
232.207—Class 1A brake tests—Designation Lists Where Performed.	655 railroads	5 lists	1 hour	5 hours.
Subsequent Years: Notice of Change to	655 railroads	250 notices	10 minutes	42 hours.
232.209—Class II brake tests—intermediate "Roll-by inspection—Results to train driver.	655 railroads	1,597,400 comments	3 seconds	1,331 hours.
232.213—Written Designation to FRA of Extended haul trains.	83,000 long dist. movements.	250 letters	15 minutes	63 hours.
232.303—General requirements—single car test: Tagging of Moved Equipment.	1,600,000 frgt. cars	5,600 tags	5 minutes	467 hours.
—Last repair track brake test/single car test—Stenciled on Side of Equipment.	1,600,000 frgt. cars	320,000 markings	5 minutes	26,667 hours.
232.305—Single Car Tests—Performance and Records.	1,600,000 frgt. cars	320,000 tests/records	60 minutes	320,000 hours.
232.307—Modification of single car air brake test procedures: Requests.	AAR	1 request + 3 copies	100 hours + 5 minutes	100 hours.
—Affirmation Statement on Mod. Req. To Employee Representatives.	AAR	1 statement + 4 copies.	30 minutes + 5 minutes.	1 hour.
—Comments on Modification Request	Railroad/Public	2 comments	8 hours	16 hours.
232.309—Repair track brake test	640 shops	5,000 tests	30 minutes	2,500 hours.
232.403—Unique Code	245 railroads	12 requests	5 minutes	1 hour.
232.407—EOT Operations requiring 2-way Voice Radio Communications.	245 railroads	50,000 verbal comments.	30 seconds	417 hours.
232.409—Inspection/Tests/Records EOTs	245 railroads	447,500 tests/notices/record.	30 seconds	3,729 hours.
—Telemetry Equipment—Testing and Calibration.	245 railroads	32,708 units marked	1 minute	545 hours.
232.503—Process to introduce new brake technology.	655 railroads	1 letter	1 hour	1 hour.
—Special approval	655 railroads	1 request	3 hours	3 hours.
232.505—Pre-revenue svc accept. test plan.				
—Submission of maintenance procedure	655 railroads	1 procedure	160 hours	160 hours.
—Amendments to maintenance procedure.	655 railroads	1 revision	40 hours	40 hours.
—Design description	655 railroads	1 petition	67 hours	67 hours.
—Report to FRA Assoc. Admin. for Railroad Safety.	655 railroads	1 report	13 hours	13 hours.
—Brake system technology testing	655 railroads	1 description	40 hours	40 hours.
232.603—Configuration Management—Configuration Management Plan (ECP).	4 railroads	1 plan	160 hours	160 hours.
—Subsequent Years—Configuration Management Plans.	4 railroads	1 plan	60 hours	60 hours.
—Request for Modification of Standards and Extra Copies to FRA.	4 railroads	1 request + 2 copies	8 hours + 5 minutes	8 hours.
—Affirmative Statements that RRs have served copies of Modification Request to Employee Representatives.	4 railroads	4 statements + 24 copies.	60 minutes + 5 minutes.	6 hours.
—Comments on requested modification	Public/Industry	4 comments	2 hours	8 hours.
232.605—ECP Brakes: Training—Adopt/Developing an ECP Training Program—First Year.	1 railroad	1 program	100 hours	100 hours.
—Subsequent Years—ECP Training Prog.	1 railroad	1 program	100 hour	100 hours.
—ECP Brakes Training of Employees—First Year.	1 railroad	1,602 trained employees.	8 hours/24 hrs.	26,480 hours.
—ECP Brakes Training of Employees—Subsequent Years.	2 railroads	1,602 trained employees.	1 hour/8 hours	7,580 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—ECP Training Records—Yr. One	2 railroads	1,602 records	8 minutes	214 hours.
—ECP Training Records—Subsequent Yrs.	2 railroads	1,602 records	4 minutes	107 hours.
—Assessment of ECP Training Plan	2 railroads	1 ECP plan	40 hours	40 hours.
—Adopt Operating Rules for ECP Brakes.	2 railroads	1 Oper. Rule	24 hours	24 hours.
—Amended Locomotive Engineer Certification Program (ECP Brakes).	2 railroads	1 amended programs	40 hours	40 hours.
232.607—ECP Inspection and Testing—Initial Terminal—Inspections and Notification/ Record of Class I Brake Tests.	1 railroad	2,500 insp.+ 2,500 notices.	90 min. + 45 seconds	3,781 hours.
—Cars added or removed en route—Class I Brake Test and Notification.	1 railroad	250 inspection + 125 notices.	60 minutes + 45 seconds.	253 hours.
—Non-ECP cars added to ECP Trains—Inspections and Tags for Defective Cars.	200 Cars	50 insp.+ 100 tags/ records.	5 minutes + 2.5 minutes.	8 hours.
232.609—Handling of Defective Equipment with ECP Brake Systems—Freight Car w/ defective conventional brakes moved in train operating in ECP brake mode.	25 Cars	50 tags/records	2.5 minutes	2 hours.
—Inspections/Tagging for ECP Train moving w/less than 85 percent operative/effective brakes.	20 Cars	20 insp. + 40 tags/ records.	5 minutes + 2.5 minutes.	3 hours.
—Cars tagged in accordance with Section 232.15.	25 Cars	50 tags/records	2.5 minutes	2 hours.
232.609—Conventional Train with standalone ECP brake equipped cars—Tagging.	50 Cars	100 tags/records	2.5 minutes	4 hours.
—Procedures for handling ECP brake system repairs and designation of repair locations.	2 railroads	2 procedures	24 hours	48 hours.
—List of repair locations	2 railroads	2 lists	8 hours	16 hours.
—Notification to FRA Safety Administrator regarding change to repair location list.	2 railroads	1 notification	1 hour	1 hour.
232.611—Periodic Maintenance—Inspections before being released from repair Shop.	500 Freight Cars	500 insp./rcds	10 minutes	83 hours.
—Procedures/Petition for ECP Single Car Test.	1 Railroad Rep.	1 petition + 2 copies	24 hours + 5 minutes	24 hours.
—Single Car Air Brake Tests—Records	50 Freight Cars	50 tests/records	45 minutes	38 hours.
—Modification of Single Car Test Standards.	1 Railroad Rep.	1 mod. Proc.	40 hours	40 hours.

The new requirements of the proposed rule essentially duplicate those already approved by OMB for Emergency Order No. 28 (under OMB No. 2130–0601). When this instant rule becomes final (assuming no changes from proposed to final rule) and the information collection associated with it is approved by OMB (under OMB No. 2130–0008), FRA will discontinue OMB No. 2130–0601 and eliminate the 205,404 hour burden associated with it from the OMB inventory. Thus, the FRA total burden in OMB's inventory then will actually show a net reduction of 24,520 hours from the present inventory.

As reflected in the below table, program changes will have increased the number of burden hours by 196,810 hours, and increased the number of responses by 23,430,684. The current inventory shows a burden total of 991,451 hours, while the present submission exhibits a burden total of 1,172,335 hours. Hence, there is a total burden increase of 180,884 hours for this information collection request.

Accordingly here is the table for program changes:

CFR Section	Responses & avg. time (previous submission)	Responses & avg. time (this submission)	Burden hours (previous submission)	FRA burden hours (this submission)	Difference (plus/minus)
232.103(n)(7)—RR Plan identifying specific locations where equipment may be left unattended.	0 revised plans 0 hours	10 revised plans 10 hours	0 hours	100 hours	+100 hours +10 responses.
—Notification to FRA when RR develops & has plan in place or modifies existing plan.	0 notices 0 minutes	10 notices 30 minutes	0 hours	5 hours	+5 hours +10 responses.
—(n)(9)—Railroad Implementation of operating rules requiring job briefing for securing unattended trains.	0 revised rules/ practices. 0 hours	491 revised rules/ practices. 2 hours	0 hours	982 hours	+982 hours +491 resp.

CFR Section	Responses & avg. time (previous submission)	Responses & avg. time (this submission)	Burden hours (previous submission)	FRA burden hours (this submission)	Difference (plus/minus)
232.103(n)(9)—Securement Job Briefings.	0 job briefings ..... 0 seconds	23,400,000 job briefings. 30 seconds	0 hours	195,000 hours	+195,000 hrs. +23,400,000 responses.
—(n)(10)—Inspection of equipment after emergency responder visit.	0 inspections ..... 0 hours	100 inspections .... 4 hours	0 hours	400 hours	+400 hours +100 resp.
232.105(h)—RR inspection of exterior locking mechanism on locomotive left unattended outside a yard.	0 inspections ..... 0 seconds	30,000 inspections/records. 30 seconds	0 hours	250 hours	+250 hours +30,000 resp.
—RR repair, where necessary, of locomotive exterior locking mechanism.	0 repairs/record .... 0 minutes	73 repairs/records 60.25 minutes	0 hours	73 hours	+73 hours +73 responses.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 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 within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule does not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This rule adds requirements to part 232. FRA is not aware of any State having regulations similar to these proposals. However, FRA notes that this part could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed, revised, reenacted, and codified at 49 U.S.C. 20106 (Sec. 20106). Sec. 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to Sec. 20106. In addition, section 20119(b) authorizes FRA to issue a rule governing the discovery and use of risk analysis information in litigation.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106 and 20119. Accordingly, FRA has determined that preparation of

a federalism summary impact statement for this proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Assessment

FRA has evaluated this rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: "(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation."

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this proposed regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. For the year 2013, this monetary amount of $100,000,000 has been adjusted to $151,000,000 to account for inflation. This proposed rule will not result in the expenditure of more than $151,000,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this proposed regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 232

Hazardous material, Power brakes, Railroad safety, Securement.

The Proposed Rule

In consideration of the foregoing, FRA is proposing to amend part 232 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 232—[AMENDED]

■ 1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–20302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 232.5 is amended by adding in alphabetical order the definition of "Unattended equipment", by removing the word "limits" from the term "Yard limits", and by moving the newly designated definition of "Yard" before the definition of "Yard air" to read as follows:

§ 232.5 Definitions.

* * * * *

Unattended equipment means equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person.

* * * * *

Yard * * *

■ 3. Amend § 232.103 by:

■ a. Revising paragraphs (n) introductory text and (n)(1) through (3).

■ b. Adding paragraphs (n)(6) through (10).

The revisions and additions read as follows:

§ 232.103 General requirements for all train brake systems.

* * * * *

(n) *Securement of unattended equipment.* Unattended equipment shall be secured in accordance with the following requirements:

(1) A sufficient number of hand brakes, to be not fewer than one, shall be applied to hold the equipment unless an acceptable alternative method of securement is provided. Railroads shall develop and implement a process or procedure to verify that the applied hand brakes will sufficiently hold the equipment with the air brakes released.

(2) Except for equipment connected to a source of compressed air (e.g., locomotive or ground air source), prior to leaving equipment unattended, the brake pipe shall be reduced to zero at a rate that is no less than a service rate reduction, and the brake pipe vented to atmosphere by leaving the angle cock in the open position on the first unit of the equipment left unattended. A train's air brake shall not be depended upon to hold equipment standing unattended (including a locomotive, a car, or a train whether or not locomotive is attached).

(3) Except for distributed power units, the following requirements apply to unattended locomotives:

(i) All hand brakes shall be fully applied on all locomotives in the lead consist of an unattended train.

(ii) All hand brakes shall be fully applied on all locomotives in an unattended locomotive consist outside of a yard.

(iii) At a minimum, the hand brake shall be fully applied on the lead locomotive in an unattended locomotive consist within a yard.

(iv) A railroad shall develop, adopt, and comply with procedures for securing any unattended locomotive required to have a hand brake applied pursuant to paragraph (n)(3)(i) through (n)(3)(iii) of this section when the locomotive is not equipped with an operative hand brake.

* * * * *

(6)(i) The requirements in paragraph (n)(7) through (n)(8) of this section apply to any freight train or standing freight car or cars that contain:

(A) Any loaded freight car containing a material poisonous by inhalation as defined in § 171.8 of this title, including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or

(B) Twenty (20) or more loaded cars or loaded intermodal portable tanks of any one or any combination of a hazardous material listed in paragraph (n)(6)(i)(A), or any Division 2.1 (flammable gas), Class 3 (flammable or combustible liquid), Class 1.1 or 1.2 (explosive), or a hazardous substance listed at § 173.31(f)(2) of this title.

(ii) For the purposes of this paragraph, a tank car containing a residue of a hazardous material as defined in § 171.8 of this title is not considered a loaded car.

(7)(i) No equipment described in paragraph (n)(6) of this section shall be left unattended on a main track or siding (except when that main track or siding runs through, or is directly adjacent to a yard) until the railroad has adopted and is complying with a plan identifying specific locations or circumstances when the equipment may be left unattended. The plan shall contain sufficient safety justification for determining when equipment may be left unattended. The railroad must notify FRA when the railroad develops and has in place a plan, or modifies an existing plan, under this provision prior to operating pursuant to the plan. The plan shall be made available to FRA upon request. FRA reserves the right to require modifications to any plan should it determine the plan is not sufficient.

(ii) Except as provided in paragraph (n)(8)(iii) of this section, any freight train described in paragraph (n)(6) of this section that is left unattended on a main track or siding that runs through, or is directly adjacent to a yard shall comply with the requirements contained in paragraphs (n)(8)(i) and (n)(8)(ii) of this section.

(8)(i) Where a freight train or standing freight car or cars as described in paragraph (n)(6) of this section is left unattended on a main track or siding outside of a yard, and not directly adjacent to a yard, an employee responsible for securing the equipment shall verify with another person qualified to make the determination that the equipment is secured in accordance with the railroad's processes and procedures.

(ii) The controlling locomotive cab of a freight train described in paragraph (n)(6) of this section shall be locked on locomotives capable of being locked. If the controlling cab is not capable of being locked, the reverser on the controlling locomotive shall be removed from the control stand and placed in a secured location.

(iii) A locomotive that is left unattended on a main track or siding that runs through, or is directly adjacent to, a yard is excepted from the requirements in (n)(8)(ii) of this section where the locomotive is not equipped with an operative lock and the locomotive has a reverser that cannot be removed from its control stand or has a reverser that is necessary for cold weather operations.

(9) Each railroad shall implement operating rules and practices requiring the job briefing of securement for any activity that will impact or require the securement of any unattended equipment in the course of the work being performed.

(10) Each railroad shall adopt and comply with procedures to ensure that, as soon as safely practicable, a qualified employee verifies the proper securement of any unattended equipment when the railroad has knowledge that a non-railroad emergency responder has been on, under, or between the equipment.

* * * * *

■ 4. Add paragraph (h) to § 232.105 to read as follows:

§ 232.105 General requirements for locomotives.

* * * * *

(h)(1) After March 1, 2017, each locomotive left unattended outside of a yard or on a track directly adjacent to the yard shall be equipped with an operative exterior locking mechanism.

(2) The railroad shall inspect and, where necessary, repair the locking mechanism during a locomotive's periodic inspection required in § 229.23 of this chapter.

(3) In the event that a locking mechanism becomes inoperative during the time interval between periodic inspections, the railroad must repair the locking mechanism within 30 days of finding the inoperative lock.

(4) A railroad may continue the use of a locomotive without an operative locking mechanism; however, if the controlling locomotive of a train meeting the requirements of § 232.103(n)(6)(i) does not have an operative locking mechanism for the locomotive, the train must not be left unattended on main track or a siding unless the reverser is removed from the control stand as required in § 232.103(n)(8)(ii) or the locomotive otherwise meets one of the exceptions described in § 232.103(n)(8)(iii).

* * * * *

Joseph C. Szabo,

Administrator.

[FR Doc. 2014–21253 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2013–0088; 4500030114]

RIN 1018–AZ56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the June 18, 2014, document that made available the draft economic analysis for the proposed designation of critical habitat for the Oregon spotted frog (*Rana pretiosa*) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties an additional opportunity to comment on the draft economic analysis for the August 29, 2013, proposed designation of critical habitat and on the June 18, 2014, changes to the proposed designation of critical habitat. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the draft economic analysis announced June 18, 2014 (79 FR 34685), is reopened. We will consider comments that we receive or that are postmarked on or before September 23, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the draft economic analysis; the associated perceptional effects memorandum; the August 29, 2013, proposed rule; and the June 18, 2014, changes to the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088 or by mail from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the draft economic analysis and the critical habitat proposal by searching for Docket No. FWS–R1–ES–2013–0088, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the draft economic analysis and the critical habitat proposal, via U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–R1–ES–2013–0088; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

FOR FURTHER INFORMATION CONTACT: Thomas L. McDowell, Acting Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503; telephone 360–753–9440; or facsimile 360–753–9445. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

On June 18, 2014, we published a document in the **Federal Register** (79 FR 34685) that made available our draft economic analysis and associated perceptional effects memorandum for our proposed rule (78 FR 53538, August 29, 2013) to designate critical habitat for the Oregon spotted frog. The June 18, 2014, document also proposed further changes to the proposed critical habitat designation for the Oregon spotted frog. With the publication of this document, we are reopening the public comment period for 14 days on that draft economic analysis and associated perceptional effects memorandum and on the changes to proposed critical habitat we announced on June 18, 2014, to allow all interested parties additional time to comment. We will consider all information and recommendations from all interested parties.

For additional details on specific information we are requesting, please see the *Information Requested* section in our proposed critical habitat designation (78 FR 53538) for the Oregon spotted frog that was published in the **Federal Register** on August 29, 2013, and the Public Comments section of the document (79 FR 34685) that was published in the **Federal Register** on June 18, 2014.

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 25, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–21230 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–XD415

Endangered and Threatened Species; Designation of Critical Habitat for Steller Sea Lions; Public Meetings

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

ACTION: Amended notice of public meeting; notice of second public meeting; request for information.

SUMMARY: Notice is hereby given of a change in a public meeting that NMFS will host to elicit scientific information related to the designation of Steller sea

lion critical habitat under the Endangered Species Act (ESA). To accommodate participation by individuals who cannot attend the meeting in person, NMFS will make the meeting available via a webinar. NMFS will also host a second public meeting to elicit scientific information related to the designation of Steller sea lion critical habitat and will accept written submissions of relevant scientific information.

DATES: The first meeting will be held September 22, 2014, from 9 a.m.–5 p.m. Pacific Daylight Time. Statements of interest and abstracts were due by 5 p.m. Alaska Daylight Time on August 29, 2014 to be considered for presentation during this meeting. The second meeting will be held October 8, 2014, from 5:30 p.m.–8:30 p.m. Alaska Daylight Time. Statements of interest and abstracts for the second meeting must be received by 5 p.m. Alaska Daylight Time on September 22, 2014 to be considered for presentation during the second meeting. Written scientific material relevant to Steller sea lion critical habitat must be received by 8:30 p.m. Alaska Daylight Time on October 8, 2014.

ADDRESSES: You may submit statements of interest in making a presentation and abstracts, and/or relevant scientific information NMFS should consider, identified by NOAA–NMFS–2014–0096, by either of the following methods:

Electronic Submissions: Submit all electronic statements of interest in making a presentation and abstracts, and all electronic scientific material relevant to Steller sea lion critical habitat, via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0096,* click the "Comment Now!" icon, complete the required fields, and enter or attach your statement of interest in making a presentation and your abstract, your relevant scientific information, or both. If you are interested in making a presentation, please indicate whether you would like to present at the meeting on September 22, 2014 or the meeting on October 8, 2014.

Mail: Submit written statements of interest in making a presentation and abstracts, and any written scientific information relevant to Steller sea lion critical habitat, to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, Attn: Ellen Sebastian, P.O. Box 21668, Juneau, AK 99802–1668. Statements of interest in making a presentation, abstracts, and scientific information sent by any other method, to any other address or individual, or received after the end of the submission period, may not be considered by NMFS. All materials received are part of the public record and will generally be posted for public viewing on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Rotterman, 907–271–1692 (*Lisa.Rotterman@noaa.gov*); or for webinar-specific assistance, contact Frank Kikuchi, 206–526–4097 (*Frank.Kikuchi@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

NMFS published notice of the September 22, 2014 meeting in the **Federal Register** on August 8, 2014 (79 FR 46392) and solicited statements of interest in making a presentation and abstracts. Subsequently NMFS received inquiries from members of the public about whether NMFS would provide alternative ways to participate. NMFS is therefore amending the original notice to accommodate participation by individuals who cannot attend the first meeting in person and to provide notice that we will hold a second meeting to elicit scientific input relevant to Steller sea lion critical habitat. NMFS will make the first meeting available via a webinar and will accept written submissions of relevant scientific information.

The purpose of these two meetings is to elicit scientific information related to the designation of Steller sea lion critical habitat under the ESA. NMFS will provide future opportunity to comment on the essential features and geographic limits of critical habitat when NMFS issues a proposed rule.

The first meeting will be held on September 22, 2014 at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115, in the Jim Traynor Conference Room. NMFS will make this meeting available by webinar. Pertinent information about this webinar is as follows:

Title: WebEx-NMML,"External Scientific Info Relevant to Steller Sea Lion Critical Habitat"

Date: Monday, September 22, 2014

Time: 9 a.m., Pacific Daylight Time (San Francisco, GMT–07:00)

Meeting Number: 574 272 234

Meeting Password: StellerCH123

1. Go to: *https://akfsc.webex.com/akfsc/j.php?MTID=m87ec74d026591a898b03008b80e39ac8*

2. If requested, enter your name and email address.

3. If a password is required, enter the meeting password: StellerCH123

4. Click "Join".

5. Follow the instructions that appear on your screen.

To view in other time zones or languages, please click the link:*https://akfsc.webex.com/akfsc/j.php?MTID=m09ae534ff16a15a7c51cdca7d0769197*

To join the audio conference only:

1. Call the teleconference number: 1–877–953–3919

Participant Passcode: 5944500

For webinar assistance:

1. Go to *https://akfsc.webex.com/akfsc/mc.*

2. On the left navigation bar, click "Support".

The second meeting will be held on October 8, 2014 at the Hilton Anchorage, 500 W. 3rd Ave., Anchorage, AK, 99501.

Arrangements for Foreign Nationals

Individuals wishing to attend the meeting on September 22, 2014 who are not citizens of the United States must make prior arrangements to be permitted entrance to the Alaska Fisheries Science Center (see **ADDRESSES**). Requests for such arrangements should be directed to Jennifer Ferdinand by email at *jennifer.ferdinand@noaa.gov* by September 8, 2014.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids for the meeting on September 22, 2014 should be directed to Jennifer Ferdinand, (206) 526–4076, at least 5 working days prior to the meeting date. Requests for sign language interpretation or other auxiliary aids for the meeting on October 8, 2014 should be directed to Dr. Lisa Rotterman, (907) 271–1692, at least 5 working days prior to the meeting date.

Dated: September 4, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–21416 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 130402316–4656–01]

RIN 0648–BD02

Vessel Monitoring Systems; Requirements for Enhanced Mobile Transceiver Unit and Mobile Communication Service Type-Approval

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to codify type-approval standards, specifications, procedures, and responsibilities applicable to commercial Enhanced Mobile Transceiver Unit (EMTU) vendors and mobile communications service (MCS) providers seeking to obtain and maintain type-approval by NMFS for EMTU/MTU or MCS, collectively referred to as vessel monitoring system (VMS), products and services. This proposed rule is necessary to specify NMFS procedures for EMTU/MTU and MCS type-approval, type-approval renewal, and revocation; revise latency standards; and ensure compliance with type-approval standards.

DATES: Comments must be received by October 24, 2014.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2014–0019, 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-2014-0019,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Kelly Spalding, 1315 East West Highway, Room 3301, Silver Spring, MD 20910

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.

Copies of the Draft Initial Regulatory Impact Review, Initial Regulatory Flexibility Analysis (IRFA), and other related documents are available by contacting the individuals listed below in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kelly Spalding, Vessel Monitoring System Management Analyst, 301–427–8269; or Eric Teeters, Fishery Regulations Specialist, 301–427–8580.

SUPPLEMENTARY INFORMATION:

Background

Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MCS vendors who have been approved to participate in the VMS program for specific fisheries. Fishers may be cited for violations of the VMS regulations and held accountable for monitoring anomalies not attributable to faults in the EMTU or MCS. EMTUs and MCS must continue to meet the standards for type-approval throughout the service life of the VMS unit. Therefore, type-approval, periodic type-approval renewal, and procedures for revocation of type-approval are essential to establish and maintain uniformly high VMS system integrity and ensure fishers have access to VMS that meet their needs. Regional Fishery Management Councils and NMFS have established VMS programs to support NMFS regulations requiring the use of VMS that typically are designed to manage fisheries resources and protect marine species and ecologically sensitive areas. VMS is also required on U.S. vessels fishing outside the U.S. EEZ pursuant to conservation and management measures adopted by international Regional Fishery Management Organizations to which the United States is a party.

The NMFS Office of Law Enforcement (OLE) maintains VMS specification requirements. Currently, vessels participating in the VMS program must acquire a NMFS type-approved EMTU that operates pursuant to specific standards set forth in NMFS Policy Directive 06–102. The EMTU allows NMFS OLE to determine the geographic position of the vessel at specified intervals or during specific events, via mobile communications services between NMFS OLE and the vessel using a NMFS-approved mobile communications service provider (MCSP). These communications are secure and the information is only made available to authorized personnel. In some regions, the use of Mobile Transmitter Units (MTUs) is allowed if the MTU was already installed on vessels when EMTUs were required. MTUs pre-date EMTUs, and, unlike EMTUs, are not capable of supporting two-way communications. No new installations of MTUs are allowed and no additional MTUs will be type-approved. However, the proposed rule would continue to allow use of previously type-approved MTUs for a period of time as set forth in proposed 50 CFR 600.1512 and 600.1513 (approval period and renewal). For an MTU type-approval renewal, 50 CFR 600.1513 provides that the MTU must, among other things, meet requirements applicable when the MTU was originally type-approved. To the extent that this rule lessens or relaxes a prior specification, e.g., latency requirements, previously type-approved MTUs will be held to the new, lesser standard.

To date, NMFS has announced the National VMS type-approval standards by several notices in the **Federal Register** (59 FR 15180, March 31, 1994; 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006; 73 FR 5813, January 31, 2008). NMFS first announced standards for the use of satellite-based VMS via a 1994 notice in the **Federal Register** (1994 VMS Type-Approval Standards; 59 FR 15180, March 31, 1994). NMFS published these standards for any VMS transceiver unit that meets the VMS requirements implemented through amendments to various regional fishery management plans. NMFS published the 1994 VMS Type-Approval Standards as a statement of policy or practice. The 1994 VMS Type-Approval Standards established a process for approval of VMS units by NMFS for fisheries which require use of VMS. These initial VMS Type-Approval Standards have been revised on multiple occasions.

In 2006 and 2008, NMFS revised its VMS Type-Approval Standards through a two-step process. In 2006, NMFS published a notice in the **Federal Register** to announce the standards for type-approvals of VMS MCSP (71 FR 3053, January 19, 2006). In 2008, NMFS published a notice in the **Federal Register** to announce the standards for type-approvals of VMS units (EMTU/MTUs) installed on vessels (73 FR 5813, January 31, 2008). Each notice stated that it superseded all previous notices

on type-approval requirements for VMS MCSP, or VMS units, respectively. The notices also stated the VMS MCS and EMTU/MTU must meet the minimal national VMS standards, as required by the notices, and the requirements of the specific fisheries for which approval is sought. In the notices, NMFS set out the process for the initiation of type-approval. Under that process, upon testing and approval by NMFS OLE Headquarters, a type-approval is officially issued to the applicant-vendor.

The notices also expressly stated that if the EMTU/MTU or MCS were changed in such a way it no longer satisfied the type-approval standards set forth in the notices, NMFS reserved the right to reconsider and revoke individual type-approvals for MCS or EMTU/MTUs installed on vessels. To date, the process for revoking individual type-approvals has not been codified into regulations. By codifying type-approval standards and setting forth type-approval renewal and revocation processes (see 50 CFR 600.1513 (renewal) and 50 CFR 600.1514 through 600.1515 (revocation and appeals)), this proposed rule would improve enforceability of VMS type-approval standards and requirements. If NMFS were to revoke type-approval for an EMTU/MTU or MCS, this proposed rule (see 50 CFR 600.1516) would also ensure affected fishers would be notified of the revocation.

An initial review of Federal rules indicated that there was the potential that this proposed rule would overlap with the NMFS Greater Atlantic Region's VMS vendor and unit requirements at 50 CFR 648.9. Currently, in the NMFS Greater Atlantic Region, the Regional Administrator has the authority and established procedures to issue type-approvals for that region. To eliminate this potential conflict in Federal regulations, this proposed rule would revise the regulations at 50 CFR 648.9 so that the NMFS OLE Director would issue type-approvals for all NMFS regions, including the Greater Atlantic Region. Revising these regulations eliminates the possibility of duplicating, overlapping, or conflicting with other codified Federal regulations.

Purpose of This Proposed Rule

The purpose of this proposed rule is to codify the VMS type-approval process and standards, improve enforceability of the type-approval standards, and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards.

Overview of the Proposed Rule

As explained in detail below, NMFS is proposing procedures and requirements for initial type-approvals for EMTUs, MCS, or EMTU/MTU ("bundle") (valid for 3 years); renewals of type-approvals; revocations of type-approvals; and appeals. NMFS OLE currently publishes in the **Federal Register** notices of type-approved EMTUs/MTUs, MCS, and bundles, and will continue to maintain and post the type-approved list on its Web site at: *http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html* and, upon request, provide the list to the Regional Fishery Management Council(s) and members of the public.

NMFS will not issue new type-approvals for MTUs, only for EMTUs. However, as set forth in proposed 50 CFR 600.1512, all MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. If a type-approval date is more than 3 years old, the type-approval would expire 30 days after publication of this rule, as finalized.

NMFS is also proposing substantive requirements for EMTUs and MCS in 50 CFR 600.1502 through 600.1509. Failure to meet these requirements or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved would trigger a Notification Letter and potential revocation procedures. For initial type-approvals and renewals, the type-approval requestor (or holder, in the case of a renewal) would be required, among other things, to certify that the EMTU, MCS, or bundle complies with each requirement set out in 50 CFR 600.1502 through 600.1509, and applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which type-approval/renewal is sought. Definitions and acronyms used in this rule are proposed in 50 CFR 600.1500.

Application for Initial Type-Approval (50 CFR 600.1501)

Under proposed 50 CFR 600.1501, a requestor must make a written request for type-approval of an EMTU, MSC or bundle, and send electronic copies of supporting material to the NMFS OLE.

As part of its application, the requestor would be required to provide to NMFS OLE two EMTUs, with activated MCS, loaded with forms and software for each NMFS region or Federal fishery for which the application is made, for a minimum of 90 calendar days for testing and evaluation. Two EMTUs, MSCPs, or bundles are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The requestor would be responsible for all associated costs of the EMTU and MCS (§ 600.1501(b)(3)(vi)).

In addition, proposed 50 CFR 600.1501 provides that the requestor must, as part of its application, provide information and documentation regarding the EMTU and MCS. The requestor would be required to provide the following information regarding the EMTU: Communication class, manufacturer, brand name, model name, model number, software version and date, firmware version number and date, hardware version number and date, antenna type, antenna model number and date, tablet, monitor, or terminal model number and date, MCS to be used in conjunction with the EMTU, entity providing MCS to the end user, and current satellite coverage of the MSC. The requestor would be required to provide third party entity information for business entities authorized to: Provide bench configuration for the EMTU; distribute/sell the EMTU to end users; install the EMTU onboard vessels; offer a limited warranty; offer a maintenance service agreement; repair or install new software on the EMTU; train end-users; advertise the EMTU; and provide other customer services. The required third party entity information includes business name and contact information, specific services provided and geographic region covered. In addition, the requestor would be required to identify the NMFS region(s) or Federal fisheries for which the requestor is seeking type-approval; include copies of or citation to applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries that require use of VMS; certify that the features, components, configuration, and services of the requestor's EMTU, MCS, or bundle comply with each requirement set out in 50 CFR 600.1502 through 600.1509 and the VMS regulations and requirements for each NMFS region or Federal fishery for which the application is made; and certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in 50 CFR 600.1502 through 600.1509 and the VMS regulations and requirements for each NMFS region or Federal fishery for which the application is made over the course of the type-approval period. Lastly, the application must include thorough documentation, including EMTU fact

sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information.

A requestor seeking type-approval of an EMTU within a particular communications class, as opposed to type-approval for use with one particular MCS, must certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

NMFS OLE would review the submissions and evaluate them based on the VMS type-approval standards, and may perform field tests and at-sea trials. For these tests and trials, NMFS OLE would either coordinate test conditions with volunteer or contracted fishing vessels, or contract a third-party to accomplish this task. The tests may involve demonstrating every aspect of EMTU and communications operation, including installation of a registered EMTU, location tracking, messaging, and maintenance procedures. Most initial type-approval decisions are anticipated to be made within approximately 3–6 months of submission of a type-approval request.

No sooner than 90 days after receipt of a complete type-approval request, NMFS OLE will notify the requestor if a request is approved or partially approved as provided in proposed 50 CFR 600.1510, or disapproved or partially disapproved as provided in § 600.1501(d). If NMFS approves or partially approves the type-approval(s), the NMFS OLE Director would issue a type-approval letter. As applicable, the letter would indicate the specific EMTU model, MCS, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCS, or bundle is approved for use. NMFS would also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

If NMFS disapproves or partially disapproves the type-approval(s), NMFS OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval. To have the request re-examined, within 21 days of the date of the NMFS OLE letter, the requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter.

If any additional information is submitted, and after reviewing such information, NMFS OLE may approve, partially approve, or continue to disapprove or partially disapprove the request. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

Communications Functionality (50 CFR 600.1502)

Proposed 50 CFR 600.1502 provides that an EMTU must be able to transmit automatically-generated Global Positioning System (GPS) position reports, provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU, be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations, be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval, have two-way communications between authorized entities and the EMTU via MCS, have the capacity to send and receive electronic forms and Internet email messages, meet the latency requirement proposed at § 600.1504 (described below), and have messaging and communications that are completely compatible with NMFS vessel monitoring software. Messages and communications from an EMTU would be required to be parsed out for separate billing when necessary. In addition, the costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS OLE entities) would be required to be parsed out and billed to separate parties, as appropriate.

Position Report Data Formats and Transmission (50 CFR 600.1503)

Pursuant to 50 CFR 600.1503, an EMTU, MCS, or bundle would be required to comply with the following requirements in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies. An EMTU must be able to transmit automatically generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement (proposed § 600.1504, described below). When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention. Position reports must contain unique identification of an EMTU within the communications class; date (year/month/day with century in the year) and time stamp (GMT) of the position fix; position fixed latitude and longitude, including the hemisphere of each, where the position fix precision must be to the decimal minute hundredths and accuracy of the reported position must be within 100 meters, unless otherwise indicated by an existing regulation or VMS requirement.

An EMTU would be required to have the ability to store 1,000 position fixes in local, non-volatile memory, allow for defining variable reporting intervals between 5 minutes and 24 hours, and allow for changes in reporting intervals remotely and only by authorized users. An EMTU would also be required to generate specially identified position reports upon antenna disconnection, loss of positioning reference signals, loss of the mobile communications signals, security events, power-up, power down, and other status data, the vessel crossing a pre-defined geographic boundary, and upon a request for EMTU status information such as configuration of programming and reporting intervals.

Latency Requirement (50 CFR 600.1504)

All of the previously published VMS type-approval specification notices (59 FR 15180, March 31, 1994; 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006; 73 FR 5813, January 31, 2008) included a reporting latency standard for type-approved EMTU/MTUs. NMFS OLE special agents and the U.S. Coast Guard (USCG) have indicated that near-real-time data transmissions are necessary to effectively enforce Federal fisheries laws and regulations. Near-real-time awareness of the location of vessels is essential to at-sea enforcement efforts, and the use of enforcement resources, in the event a vessel crosses into a closed area or other protected or ecologically sensitive area. NMFS and the USCG must ensure optimal and cost-effective dispatch of enforcement assets for at-sea interception, landing inspections, follow-up inspections, and active investigations of already-suspect vessels.

NMFS OLE, states (through Joint Enforcement Agreements), and the USCG all use VMS for indication and substantiation for dispatching their assets. VMS-reporting delays result in less efficient use of funds, personnel, and other assets. NMFS OLE, states, and the USCG use near real-time VMS data on a daily basis to enhance law enforcement capabilities.

Delayed data delivery is detrimental to fishers as well. Fishers may be delayed in starting a fishing trip if they

are required to deliver notice to NMFS OLE via VMS before leaving the dock and delivery is delayed due to a latency issue with that delivery, or days-at-sea may be miscalculated due to the delayed reporting of Demarcation-Line crossings. The delayed position reporting may cast doubt on documentation regarding when a vessel reported the required information via their VMS, leading to administrative or legal implications.

Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fishery regulations.

Finally, in order for VMS data to carry its proper weight as admissible evidence, the national VMS program must be reliable in its entirety. Long latency periods draw into question the reliability of VMS data altogether.

For these reasons, NMFS has determined it is essential for all VMS data to continue to be delivered by type-approved EMTU/MTUs in near-real-time. The reporting latency requirements published in the **Federal Register** notices listed above stated that NMFS must receive no less than 97 percent of all messages within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). Based on the NMFS OLE having reviewed several years of reports and input from NMFS OLE special agents and the USCG, NMFS believes that the requirements can be lowered slightly and still maintain the integrity of performance of the VMS program for providing near real-time data transmission. In light of these findings, NMFS proposes to revise this latency requirement to require that 90 percent of all pre-programmed or requested (e.g. manual poll request) GPS position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. NMFS also considered whether the latency requirement could be reduced further to require that 50 percent of the above-described reports must reach NMFS within 15 minutes, for 10 out of 11 consecutive days. A 50 percent standard, however, does not achieve the objective of providing near real-time VMS data on a daily basis. Further considerations and alternatives for this revised latency requirement are discussed in the Classification section below.

As explained in 50 CFR 600.1504, NMFS will continually examine these position reports by region and by type-approval holder. NMFS will select the exact dates to be used for calculation of latency, but will not use days in which isolated and documented system outages occur.

Messaging (50 CFR 600.1505)

An EMTU would be required to provide for the capabilities specified in 50 CFR 600.1505. These capabilities include a minimum supported message length; minimum message history for inbox, outbox and sent message displays; confirmation of delivery and notification or failed delivery; and an "address book," "reply" and review capabilities.

Electronic Forms (50 CFR 600.1506)

Pursuant to proposed 50 CFR 600.1506, an EMTU, and its forms software must support a minimum of 20 Electronic Forms and meet the following requirements. Section 600.1506(a)(1) requires that each field on a form must be capable of being validated (defined) as Optional, Mandatory, or Logic Driven and sets forth explanations of those terms. In addition, a user must be able to select forms from a menu on the EMTU, populate a form based on the last values used, and modify or update a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission.

Section 600.1506(a)(4) would require that each form be capable of providing a position report with VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and be incapable of being manually entered or altered. Delivery of form data to NMFS must employ the same transport security and reliability as VMS position reports (§ 600.1506(a)(5)). The SMPT protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain "," (comma) characters must be quoted. XML representations must use the field label to define the XML element that contains each field value.

Section 600.1506(b) states that the EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation. From time to time, NMFS may provide type-approval holders with requirements for new forms or modifications to existing forms. NMFS would also provide notice of forms and form changes through the NMFS Work Order System. Type-approval holders would be given at least 60 calendar days to complete their implementation of new or changed forms. Type-approval holders would be capable of, and responsible for, translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

Communications Security (50 CFR 600.1507)

Section 600.1507 provides that communications between an EMTU and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU and MCS would be required to have mechanisms to prevent, to the extent possible: Sniffing and/or interception during transmission from the EMTU to MCS and spoofing (see proposed definitions at 50 CFR 600.1500); false position reports sent from an EMTU; modification of EMTU identification; interference with GMDSS or other safety/distress functions; introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission(s), and the VMS system. The EMTU would also be required to have mechanisms to prevent the EMTU terminal from communicating with, influencing or interfering with the GPS antenna or its functionality, position reports, or sending of position reports. The position reports must not be able to be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

Customer Service (50 CFR 600.1508)

The type-approval holder would be responsible for ensuring that customer service includes: Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round; response times for customer service inquiries that do not exceed 24-hours; warranty, and maintenance agreements; escalation procedures for resolution of problems; established

facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs; assistance to fishers in the diagnosis of the cause of communications anomalies; assistance in resolving communications anomalies that are traced to the EMTU/MTU; and assistance to NMFS OLE and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or purchase agreements, work orders, or contracts.

General Requirements (50 CFR 600.1509(a))

Under proposed 50 CFR 600.1509, an EMTU would be required to have the durability and reliability necessary to meet all proposed requirements regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna would be required to be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

Personally Identifiable Information (PII) (50 CFR 600.1509(b))

PII and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII), as defined in the Department of Commerce Information Technology Privacy Policy (available at *http://ocio.os.doc.gov/ITPolicyandPrograms/IT_Privacy/DEV01_002682*). A type-approval holder would be responsible for ensuring that: All PII and other protected information must be handled in accordance with applicable state and federal law; all PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or for the participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel; any release of PII or other protected information beyond authorized entities be requested and approved in writing, as appropriate, by the submitter of the data, or by NMFS; and any PII or other protected information sent electronically by the type-approval holder to the NMFS OLE be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

Changes or Modifications to Type-Approvals (50 CFR 600.1511)

After an EMTU/MTU is type-approved, the type-approval holder would be required to notify NMFS OLE in writing no later than 2 calendar days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration. Timely notification of such changes are needed in order to allow NMFS OLE to be aware of a problem or a change that would affect monitoring, and so that NMFS OLE may reserve troubleshooting resources for a known issue, to give notice of an issue to our stakeholders, and to be sure that the unit is still in a type-approved status. NMFS would notify the type-approval holder within 60 calendar days if an amended type-approval would be required, or if NMFS elects to revoke the original type-approval in light of the substantive changes to the original submission.

Type-Approval Period (50 CFR 600.1512) and Renewal (50 CFR 600.1513)

Under 50 CFR 600.1512, NMFS is proposing that a type-approval or type-approval renewal would be valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to 50 CFR 600.1510, subject to the revocation process at 50 CFR 600.1514. NMFS has considered three alternative periods of time for a renewal process: 1 Year, 3 years, and 10 years. NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle, because changes in technology are not rapid enough to warrant such a short renewal cycle, and 1-year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 10-year renewal period would be too long an interval between the time an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record. Therefore, NMFS is proposing that at least 30 days, but no more than 6 months, prior to the end of each 3-year period, a type-approval holder may apply for renewal. To do so, the type-approval holder must submit a written renewal request letter and information and documentation required under 50 CFR 600.1513.

Pursuant to proposed 50 CFR 600.1513, the type-approval holder would need to certify that the features, components, configuration and services of their type-approved EMTU, MCS or bundle remain in compliance with the standards set out in 50 CFR 600.1502 through 600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (a)(1) that require use of VMS. The type-approval holder would also certify that, since the holder's type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of their type-approved configuration. Per § 600.1513(b), the renewal request letter must also include a table that lists in one column each requirement set out in this proposed rule. The subsequent columns would show for each requirement:

(1) Whether the requirement applies to their type-approval;

(2) Whether the requirement is still being met;

(3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;

(4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and

(5) The date that any modifications or replacements were made.

If the type-approval renewal is for an MCS or bundle, the renewal request letter would also be required under § 600.1513(c) to include vessel position report statistics regarding the processing and transmission of position reports from the onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center. The statistics would at a minimum include successful position report transmission and delivery rates, the rate of position report latencies, and the minimum/maximum/average lengths of time for those latencies. The showing would be demonstrated in graph form, would be divided out by each NMFS region and any relevant international agreement area and relevant high seas area, and would cover 6 full and consecutive months of data for all of the type-approval holder's U.S. federal fishery customers.

As explained in § 600.1513(d), within 30 days after receiving a complete renewal request letter, NMFS would notify the type-approval holder of approval or partial approval of the renewal request as provided in 50 CFR 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

Per § 600.1513(e), if NMFS denies or partially denies the renewal request, NMFS OLE will send a letter to the type-approval holder that explains the reason for the denial/partial denial. Within 21 days of the date of the NMFS OLE letter, the type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial/partial identified in the NMFS OLE letter.

If any additional information is submitted, and after reviewing such information, NMFS OLE may approve, partially approve, or continue to deny, or partially deny the request. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the denial/partial denial. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

Type-Approval Period (50 CFR 600.1512)

All MTUs, EMTUs, MCSPs, and bundles with valid type-approvals on the effective date of this rule, as finalized, would continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval would expire 30 days after publication of the final rule.

As an example, if the most recent type-approval occurred on January 1, 2013, then the MTU, EMTU, MCS, or bundle, as appropriate, would need to be renewed by January 1, 2016. If a type-approval date is more than 3 years old, the type-approval will expire unless the type-approval holder submits a timely renewal request pursuant to § 600.1513.

Revocation of Type-Approval (50 CFR 600.1514)

If at any time a type-approved EMTU, MCS or bundle fails to meet requirements at 50 CFR 600.1502 through 600.1509, or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, NMFS OLE may issue a Notification Letter to the type-approval holder that would, among other things, provide information regarding the alleged failure(s), set a Response Date by which the type-approval holder would have to present a response (if any), and explain options for recourse if the type-approval holder believes the Notification Letter is in error.

Depending on the urgency and impact of the alleged failure, NMFS would establish a Response Date between 30 and 120 calendar days from the date that NMFS issued the Notification Letter. The type-approval holder's response would be required to be received in writing by the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval would be revoked (see § 600.1514(b)), and NMFS would notify the owners of vessels using this specific EMTU/MTU, MCS, or bundle of the type-approval revocation. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the NMFS Notification Letter.

A type-approval holder who has submitted a timely response to a Notification Letter may meet with NMFS to discuss a detailed and agreed-upon procedure for resolving the issue. The meeting between NMFS and the type-approval holder will take place within 21 calendar days of the date of the written response and may be in person, via conference call, or webcast.

If the type-approval holder disagrees with the Notification Letter for the reasons described in § 600.1514(d), then the type-approval holder should deliver its Objection, in writing, before the Response Date. Within 21 calendar days of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the alleged failure. If modifications to any part of the Notification Letter are required, then NMFS would deliver a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

If the failure(s) to comply cannot be resolved through the above process within NMFS' specified timeframe, then the type-approval would be revoked. As provided in § 600.1514(f), the NMFS OLE Director would issue a Revocation Letter that, among other things: Identifies the MTU/EMTU, MCS, or bundle for which type-approval is being revoked; summarizes background of the failure(s) to comply with type-approval regulations and requirements, including efforts to resolve the issue(s); summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure; states that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred; states that no new installations of the relevant MTU/EMTU will be approved for use in the U.S. VMS Program; explains why resolution was not achieved; and provides information about the appeals process.

If the former type-approval holder, at a later date, brings an EMTU, MCS, or bundle with a revoked type-approval into compliance, the former type-approval holder may reapply for type-approval under the process established in 50 CFR 600.1501.

Appeals Process (50 CFR 600.1515)

A type-approval holder may file an appeal of a type-approval revocation with the NMFS Assistant Administrator at an address designated by NMFS. Under proposed § 600.1515(b), a petition must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder would not be able to request an extension of time to file a petition to appeal.

An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and/or refuting the details contained in Revocation Letter (see § 600.1515(c)). Within 21 days of receipt of the appeal, the NMFS Assistant Administrator would affirm, vacate, or modify the Revocation Letter. The NMFS Assistant Administrator will send a letter to the type-approval holder explaining his or her determination. The Assistant Administrator's determination constitutes the final agency decision.

Revocation Effective Date and Notification to Vessel Owners (50 CFR 600.1516)

Following issuance of a Revocation Letter pursuant to 50 CFR 600.1514 and any appeal pursuant to 50 CFR 600.1515, NMFS would provide notice to affected vessel owners about the revocation via letter and **Federal Register** Notice. NMFS would provide information on the next steps vessel owners should take to remain in compliance with applicable VMS requirements and the effective date of the revocation. The effective date would be between 60–90 calendar days of the notice. This period of time would allow vessel owners to purchase and install a new type-approved VMS unit and avoid losing fishing opportunities. NMFS would also include information about

any reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

Litigation Support (50 CFR 600.1517)

Due to the use of VMS for law enforcement, all technical aspects of a type-approved EMTU/MTU, MCS, or bundle submission are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, among other things, testing procedures, error rates, peer review, technical processes, and general industry acceptance.

The type-approval holder would be required to provide technical and expert support for litigation to substantiate the EMTU/MTU, MCS, or bundle capabilities to establish NMFS OLE cases against violators, as needed, as a requirement of their type-approval. If the technologies have previously been subject to such scrutiny in a court of law, the vendor would be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Additionally, to maintain the integrity of VMS for fisheries management, the type-approval holder would be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations, such as details of anti-tampering safeguards.

Reimbursement Options (50 CFR 600.1518)

NMFS Policy Directive 06–102 outlines the guidelines for NMFS to reimburse fishers for their VMS equipment and is viewable at *www.nmfs.noaa.gov/op/pds/*. Reimbursement opportunities may be available for the purpose of providing assistance to vessel owners for the purchase of a replacement EMTU if the vessel owner meets the eligibility and process requirements in NMFS Policy Directive 06–102, and NMFS revokes type-approval for the owner's existing EMTU or NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing EMTU's service life. Reimbursement payments are subject to available funding

The current maximum for individual reimbursement payments is $3,100.00 per unit. This amount is subject to change.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), to analyze the economic impacts that this proposed rule would have on small entities. A summary of the IRFA is included below.

Section 603(b)(1) of the RFA requires that the Agency describe the reasons the action is being considered. NMFS seeks to codify in regulations VMS type-approval standards, specifications, procedures, and responsibilities applicable to commercial EMTU vendors and/or MCSP so they are able to obtain and maintain VMS type-approval by NMFS for products and/or services. In addition, the proposed rule sets out NMFS procedures for VMS type-approval renewal and revocation. The purpose of this proposed rule is to codify the VMS type-approval process, improve enforceability of the type-approval standards and better ensure all EMTUs and MCS remain in compliance with NMFS type-approval standards.

Section 603(b)(2) of the RFA requires a succinct statement of the objectives of, and legal basis for, the proposed rule. NMFS aims to further promote reliable, robust, and secure VMS products. The objective of this proposed rule is to revise latency standards, improve the enforceability of the EMTU/MTU and MCS type-approval standards, and to establish type-approval renewal and revocation processes. The legal basis for this proposed rule stems from the Magnuson-Stevens Act (MSA). Reliable, robust, and secure VMS products are necessary for the effective implementation of various fishery management measures, such as closed areas, that are established by MSA fishery management plans throughout the country to reduce bycatch of undersized commercial fish species, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Under Section 603(b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States. This proposed rule will impact EMTU vendors and MCSP, which fall within the SBA's satellite telecommunications classification (North American Industry Classification System code 517410) that has a small business size standard of $32.5 million. This proposed rule would directly apply to the existing six NMFS type-approved VMS equipment providers and any companies wishing to obtain VMS type-approval in the future. NMFS has received inquiries from three other companies possibly seeking type-approval in the past. Based on a review of company financial records, NMFS estimates approximately half of the current VMS equipment providers would not be considered small businesses under the SBA size standard for the satellite telecommunications industry. Of the remaining businesses, many of them are privately held businesses that do not publicly report annual revenues, so it is difficult for NMFS to definitively determine whether they are small businesses. NMFS therefore conservatively estimates that this proposed rule would impact three to six small entities.

Section 603(b)(4) of the RFA requires that the Agency provide a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This proposed rule could involve reporting, record keeping, and other compliance requirements for the proposed application process, notifications for any substantive changes, litigation support, periodic renewal, and possibly responses to revocation notices.

The proposed application process would require a vendor requesting type-approval of an EMTU, MCS, or bundle to make a written request to the NMFS. The requestor would be required to certify that the EMTU, MCS or bundle meets the requirements set out in §§ 600.1502–600.1509 of the proposed rule and provide the following information pertaining to the EMTU, MCS, or bundle: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; the vendor-approved business entities associated with the EMTU and its use; messaging functionality; position data formats and transmission standards; electronic form and messaging

capabilities; detail the customer service that would be provided to NMFS; general durability and reliability of the unit, ability of the unit to comply with any additional requirements specified in the regulations for the VMS implementation; and protection of personally identifying information and other protected information for the purchase or activation of an MTU or EMTU from disclosure. In addition, as part of its application, the requestor would be required to provide to NMFS OLE two EMTUs, with activated MCS, loaded with forms and software for each NMFS region or Federal fishery for which the application is made for a minimum of 90 calendar days for testing and evaluation. Two EMTUs are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The application must also include thorough documentation, including EMTU fact sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information. This application process would likely require engineering and product manager expertise for preparation of the application.

The proposed rule would also require type-approval holders to notify NMFS within 2 calendar days of any substantive changes from the original submission for type-approval.

As a condition of type-approval, the type-approval holder would be required to provide technical and expert support for litigation to substantiate the EMTU, MCS, or bundle capabilities to establish NMFS OLE cases against potential violators, as needed. If the technology has been subject to prior scrutiny in a court of law, the type-approval applicant or holder would be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Prior to the end of each 3 year type-approval period, a type-approval holder may request renewal of the type-approval. In a renewal request, the type-approval holder must demonstrate successful compliance with applicable type-approval standards and requirements. To do so, the type-approval holder would certify, and complete a table that documents, that the EMTU, MCS, or bundle remains in compliance with type-approval standards and requirements. This type-approval renewal process would likely require engineering and product manager expertise for preparation of the renewal request.

If NMFS issues a Notification Letter indicating intent to revoke a type-approval, the type-approval holder may respond, in writing, if the type-approval holder believes the Notification Letter is in error or can propose a solution to correct the issue. Any response would have to be submitted by a Response Date that NMFS will set between 30 to 120 calendar days from the date of the Notification Letter. This response would likely require engineering and product manager expertise to develop.

Section 603(b)(5) of the RFA requires an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. An initial review of Federal rules indicated that there was the potential that this proposed rule would overlap with the NMFS Greater Atlantic Region (GARFO) VMS type approval regulations at 50 CFR 648.9. Currently, the GARFO Regional Administrator has the authority to issue type-approvals for that region. To eliminate this potential conflict in Federal regulations, this proposed rule would revise the GARFO regulations so that the NMFS OLE Director would issue type-approvals for all NMFS regions, including GARFO. Revising the GARFO regulations minimizes the possibility that the proposed rule would duplicate, overlap, or conflict with other codified Federal regulations.

Section 603(c) of the RFA requires a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Additionally, section 603(c) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with all legal requirements, NMFS cannot exempt small entities or change the VMS type-approval process and standards only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS has strived to clarify and simplify the type-approval process by proposing to codify the type-approval standards, specifications, procedures, and responsibilities for EMTU, MCS and bundle type-approval applicants and holders in this proposed rule. In addition, NMFS is considering performance rather than design standard alternatives for messaging latency standards for EMTUs, MCSs or bundles.

NMFS analyzed several different alternatives in this proposed rulemaking and provides the rationale for identifying the preferred alternatives to achieve the desired objective. Requestors of type-approval must submit a written request to NMFS OLE and a statement that the unit for which approval is sought meets the NMFS OLE type-approval standards. The application process would likely require engineering and product manager expertise for preparation of the application. NMFS estimates that small entities would utilize up to approximately 40 hours engineering labor and 40 hours of product management labor to compile the written request and statement that details how the EMTU, MCS, or bundle meets the minimum national VMS standards and applicable VMS regulations and requirements for the regions and Federal fisheries for which type-approval is requested. This estimate would also include the amount of time it would take to compile the documentation and the packaging of the EMTUs to ship to each NOAA region or Federal fisheries for which an application is submitted. Based on the Bureau of Labor Statistics May 2012 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is approximately $44 per hour, and for general and operations managers it is approximately $55 per hour. Therefore, NMFS estimates the total wage costs to be approximately $3,960 per type-approval application.

Type-approval requestors would be required to send two EMTUs for testing to each NMFS region or Federal fishery for which type-approval is sought. NMFS estimates that type-approval requestors will likely spend between $85 and $220 per NMFS region for shipping two EMTUs, based on current ground shipping rates for a package of up to 30 pounds ($77.50–$210 depending on the region), box costs ($2.50), and packaging materials ($5.00). Some requestors may opt to use next day air delivery to expedite the process, which would increase the shipping costs to approximately $250 per package, but that option is not as economical. NMFS estimates that a vendor would send units to five

different NOAA regional offices on average. Therefore, the total shipping cost per application is estimated to be $695 based on ground delivery costs of approximately $85 per region in the continental United States, and $220 per region for the Alaska and the Pacific Islands offices.

The average cost of an EMTU unit is approximately $3,000. The vendor would be unable to sell the EMTU units as new after providing them to NMFS for testing and evaluation for 90-days. They might only get 60 to 80 percent of the regular retail value on refurbished units. Based on NMFS' estimate that 10 EMTUs that regularly retail for $3,000 new would be sent to 5 regional offices, the reduced retail revenue might total approximately $6,000 to $12,000 per type-approval application. Alternatively, the vendor may opt to use these units as demo units for trade shows and other marketing purposes, and therefore considerably lower the costs of providing the evaluation units. It is difficult to estimate the exact costs associated with providing the units to NMFS given the uncertainty associated with what vendors would do with these EMTUs after the 90-day evaluation period.

As part of this proposed rule, NMFS is also considering three alternatives to the EMTU latency requirements. These alternatives include no change from the current requirement that 97-percent of each vendor's position reports during each specified 24-hour period must reach NMFS within 15 minutes, for ten out of eleven consecutive days; a 90-percent requirement; and a 50-percent requirement.

Based on NMFS OLE having reviewed several years of reports, NMFS believes that the current 97 percent latency standard is not necessary to meet the needs of NMFS OLE and the U.S. Coast Guard (USCG) for near-real-time data. *See* Latency Requirement section above (explaining need for near-real-time data). Also, the 97 percent latency standard requirement would be the most costly for vendors to achieve. Based on several years of reports, it is clear this latency requirement is difficult for type-approval holders to achieve consistently. Several of the current EMTU type-approval holders would have to take significant corrective actions, at likely significant costs, to achieve the 97-percent standard. The corrective actions could potentially include deploying new satellites, switching out antennas on all units in order to switch to a more reliable network, or reengineering the communication software or backend hardware to ensure more reliable and efficient data transmission. These solutions would potentially require significant capital investments, which would be particularly challenging to small entities. Some vendors might instead opt out of this market given the potentially significant costs. While the 97-percent requirement would achieve the objective of collecting reliable real-time data for enforcement of Federal fisheries laws and regulations, it is not the most cost effective alternative.

NMFS determined that the latency requirement can be lowered to 90 percent and still maintain the integrity of the VMS program by providing near real-time data transmission. In light of these findings, NMFS proposes to revise this latency requirement to require that 90 percent of all pre-programmed or requested (e.g. manual poll request) GPS position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. Also, the 90 percent latency standard requirement is a more cost effective alternative. NMFS, along with its USCG partner, believe that the 90-percent standard can meet the objective of providing near-real-time data on a consistent basis.

While the third alternative, a 50-percent requirement, would be the least burdensome alternative for VMS vendors to achieve, this standard does not meet the objective of providing near real-time VMS data on a consistent basis. VMS-reporting delays will result in less efficient use of government funds, personnel, and other assets. Delayed data delivery is detrimental to fishers as well. Fishers have been delayed in starting fishing trips because VMS latency prevented them from delivering notice to NMFS OLE via EMTU/MTU before leaving the dock, and fishers' days-at-sea have been miscalculated due to the delayed reporting of Demarcation-Line crossings. Delays may also result in confusing documentation regarding when a vessel reported the required information via their EMTU, leading to administrative or legal complications. Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fisheries laws and regulations. Finally, in order for VMS data to carry its proper weight as admissible evidence, the VMS unit must be reliable. Long latency periods draw into question the reliability of the unit and its data, altogether. For these reasons, NMFS does not prefer the 50-percent standard at this time.

After a type-approval is issued, the type-approval holder must notify NMFS OLE no later than 2 calendar days following any substantive change in the original submission, such as changes to firmware, software or hardware versions, MCS operations or performance, or customer support contacts. Within 60 calendar days of receiving such notice, NMFS OLE will notify the type-approval holder if an amended type-approval will be required, including additional testing, or provide notice that NMFS OLE will initiate the type-approval revocation process. NMFS estimates that small entities would utilize up to approximately four hours engineering labor and four hours of product management labor to notify NMFS of any substantive changes to the original type-approval submission and provide the agency with the details of those changes. Based on the National Occupational Employment and Wage Estimates, NMFS estimates the total wage costs to be approximately $396 for the change notification process.

NMFS is considering three alternative periods of time for a type-approval renewal process: 1 year, 3 years, and 10 years. The renewal process would be identical for each of these alternatives, except for the frequency of type-approval renewal.

NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle because changes in technology are not rapid enough to warrant such a short renewal cycle and 1 year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 1-year interval would also impose an undue burden on type-approval holders and NMFS OLE.

While a 10-year renewal period would minimize the economic impacts of preparing renewal applications, NMFS considers this to be too long an interval between the time when an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record with the regulations set forth in this proposed rule. Significant technological change might also occur over a 10-year period.

NMFS prefers, and the proposed rule provides, that a type-approval will be valid for a period of 3 years. As such, prior to the end of each 3-year period, an EMTU vendor may request renewal of a type-approval. The type-approval holder would be required to demonstrate successful compliance with

applicable type-approval standards and requirements.

NMFS estimates that this renewal process would involve up to 16 hours of engineering labor and 8 hours of product management labor to certify compliance with the type-approval standards and compile supporting materials. Based on the National Occupational Employment and Wage Estimates previously discussed, NMFS estimates the renewal process could result in up to $1,144 in labor costs. If the type-approval is not renewed by NMFS, the economic costs would be the same as those described below for the revocation process.

If a type-approved EMTU/MTU, MCS, or bundle fails to meet applicable requirements and standards, NMFS will initiate the type-approval revocation process by issuing a Notification Letter to the type-approval holder that identifies the potential violation(s). NMFS will set a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder may submit a response or an Objection Letter, but either must be submitted on or before the Response Date. NMFS estimates that this revocation process would potentially involve 16 hours of engineering labor and 8 hours of product management labor to investigate the issues raised by NMFS and prepare a written response. Based on the wage costs previously discussed, NMFS estimates the revocation process could result in approximately $1,144 in labor costs. However, the actual amount of labor costs could vary considerably depending on the complexity of the issues causing the alleged failure NMFS identified. Some type-approval holders may decide not to challenge the revocation or may be unable to bring the issue to final resolution to NMFS' satisfaction and then face the revocation of the type-approval for their product. The type-approval holder would then be impacted by the loss of future EMTU sales and monthly data communication fees from vessels required to carry and operate a type-approved EMTU/MTU, MCS, or bundle.

The type-approval holder could also opt to appeal the type-approval revocation. In addition to the costs associated with the engineering and product management support provided during the revocation process, the type-approval holder may also decide to employ legal counsel to challenge the agency's decision. These costs could vary considerably depending on the complexity of the appeal arguments.

NMFS estimates that this proposed rule, if finalized, would impact three to six entities, and as such this proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Public comment is sought on all aspects of this proposed rule. Send comments to NMFS, Headquarters at the **ADDRESSES** above.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 648

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 600 and 648 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Add Subpart Q to read as follows:

Subpart Q—Vessel Monitoring System Type-Approval

Sec.

§ 600.1500 Definitions and acronyms.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, and the acronyms in § 600.15, the terms and acronyms in this subpart have the following meanings:

Authorized entity means a person, defined at 16 U.S.C. 1802(36), authorized to receive data transmitted by EMTU(s) or MTU(s).

Bench configuration means the EMTU's configuration after the manufactured unit has been customized to meet the federal VMS requirements.

Bundle means an MCS and EMTU sold as a package and considered one product. If a bundle is type-approved, the requestor will be the type-approval holder for the bundled MCS and EMTU.

Communication class means the satellite communications operator from which satellite communications services originate.

Electronic form means a pre-formatted message transmitted by an EMTU that is required for the collection of data for a specific fishery program (*e.g.;* declaration system, catch effort reporting).

Enhanced Mobile Transceiver Unit (EMTU) means a type of MTU that is capable of supporting two-way communication, messaging, and electronic forms transmission via satellite. An EMTU is a transceiver or communications device, including: antenna; dedicated message terminal and display; and an input device such as a tablet or keyboard installed on fishing vessels participating in fisheries with a VMS requirement.

Latency means the state of untimely delivery of Global Positioning System position reports and electronic forms to NMFS (*i.e.;* information is not delivered to NMFS consistent with timing requirements of this subpart).

Mobile Communications Service (MCS) means the satellite communications services affiliated with particular MTUs/EMTUs.

Mobile Communications Service Provider (MCSP) means the entity that sells VMS satellite communications services to end users.

Mobile Transmitter Unit (MTU) means a communication device capable of transmitting Global Positioning System position reports via satellite.

Notification Letter means a letter issued by NMFS to a type-approval holder identifying an alleged failure of an EMTU, MTU, MCS, or the type-approval holder to comply with requirements of this subpart.

Position report means the unique electronic Global Positioning System report generated by a vessel's EMTU or MTU, which identifies the vessel's

latitude/longitude position at a point in time. Position reports are sent from the EMTU or MTU, via MCS, to authorized entities.

Requestor means a vendor seeking type-approval.

Service life means the length of time during which an EMTU/MTU remains fully operational with reasonable repairs.

Sniffing means the unauthorized and illegitimate monitoring and capture, through use of a computer program or device, of data being transmitted over a computer network.

Spoofing means the reporting of a false Global Positioning System position and/or vessel identity.

Time stamp means the time, in hours, minutes, and seconds in a position report. Each position report is time stamped.

Type-approval holder means a vendor whose type-approval request has been approved pursuant to this subpart.

Vendor means a commercial provider of VMS hardware, software, and/or mobile communications services.

Vessel Monitoring System (VMS) means, for purposes of this subpart, a satellite based system designed to monitor the location and movement of vessels using onboard EMTU or MTU units that send Global Positioning System position reports to an authorized entity.

Vessel Monitoring System (VMS) data means the data transmitted to authorized entities by an EMTU or MTU.

Vessel Monitoring System Program means the federal program that manages the vessel monitoring system, data, and associated program-components, nationally and in each NOAA region; it is housed in the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service's Office of Law Enforcement.

§ 600.1501 Vessel Monitoring System type-approval process.

(a) *Application submission.* A requestor must submit a written type-approval request and electronic copies of supporting materials that include the information required under this section to the NMFS Office of Law Enforcement (OLE) at: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, SSMC3, Suite 3301, Silver Spring, Maryland 20910.

(b) *Application requirements*—(1) *EMTU and MCS identifying information.* In a type-approval request, the requestor should indicate whether the requestor is seeking approval for an EMTU, MCS, or bundle and must specify identifying characteristics of the EMTU and MCS, as applicable: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; and current satellite coverage of the MCS.

(2) *Requestor-approved third party business entities.* The requestor must provide the business name, address, phone number, contact name(s), email address, specific services provided, and geographic region covered for the following third party business entities:

(i) Entities providing bench configuration for the EMTU at the warehouse or point of supply;

(ii) Entities distributing/selling the EMTU to end users;

(iii) Entities currently approved by the requestor to install the EMTU onboard vessels;

(iv) Entities currently approved by the requestor to offer a limited warranty;

(v) Entities approved by the requestor to offer a maintenance service agreement;

(vi) Entities approved by the requestor to repair or install new software on the EMTU;

(vii) Entities approved by the requestor to train end users;

(viii) Entities approved by the requestor to advertise the EMTU; and

(ix) Entities approved by the requestor to provide other customer services.

(3) *Regulatory requirements and documentation.* In a type-approval request, a requestor must:

(i) Identify the NOAA region(s) and/or Federal fisheries for which the requestor seeks type-approval;

(ii) Include copies of, or citation to, applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (b)(3)(i) of this section that require use of VMS;

(iii) Provide a table with the type-approval request that lists in one column each requirement set out in §§ 600.1502 through 600.1509 and regulations described under paragraph (b)(3)(ii) of this section. NMFS OLE will provide a template for the table upon request. The requestor must indicate in subsequent columns in the table:

(A) Whether the requirement applies to the type-approval; and

(B) Whether the EMTU, MCS or bundle meets the requirement.

(iv) Certify that the features, components, configuration and services of the requestor's MTU, EMTU, MCS or bundle comply with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (b)(3)(ii) of this section;

(v) Certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (b)(3)(ii) of this section over the course of the type-approval period;

(vi) Provide NMFS OLE with two EMTUs loaded with forms and software for each NOAA region or Federal fishery, with activated MCS, for which a type-approval request is submitted for a minimum of 90 calendar days for testing and evaluation. Copies of forms currently used by NMFS are available upon request. As part of its review, NMFS OLE may perform field tests and at-sea trials that involve demonstrating every aspect of EMTU and communications operation. The requestor is responsible for all associated costs including paying for: shipping of the EMTU to the required NMFS regional offices or headquarters for testing; the MCS during the testing period; and shipping of the EMTU back to the vendor; and

(vii) Provide thorough documentation for the EMTU or MTU and MCS, including: EMTU fact sheets; installation guides; user manuals; any necessary interfacing software; satellite coverage; performance specifications; and technical support information.

(c) *Interoperability.* A requestor seeking type-approval of an EMTU within a communications class, as opposed to type-approval for use with a specific MCS, shall certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

(d) *Notification.* No sooner than 90 days after receipt of a complete type-approval request, NMFS OLE will notify the requestor as follows:

(1) If a request is approved or partially approved, NMFS NMFS OLE will provide notice as described under § 600.1510.

(i) The type-approval letter would serve as official documentation and notice of type-approval.

(ii) NMFS would also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

(2) If a request is disapproved or partially disapproved:

(i) OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval.

(ii) The requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter. The requestor must submit this response within 21 calendar days of the date of the OLE letter sent under paragraph (d)(2)(i) of this section.

(iii) If any additional information is submitted under paragraph (d)(2)(ii) of this section, NMFS OLE, after reviewing such information, may either take action under paragraph (d)(1) of this section or determine that the request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the continued disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1502 Communications functionality.

(a) An EMTU must comply with the following requirements:

(1) Be able to transmit all automatically-generated position reports;

(2) Provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU;

(3) Be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations;

(4) Be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval;

(5) Have two-way communications between authorized entities and EMTU via MCS;

(6) Have the capacity to send and receive electronic forms and Internet email messages; and

(7) Have messaging and communications that are completely compatible with NMFS vessel monitoring software.

(b) Messages and communications from an EMTU must be able to be parsed out for separate billing when necessary. The costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS Office of Law Enforcement entities) must be parsed out and billed to separate parties, as appropriate.

§ 600.1503 Position report data formats and transmission.

An EMTU, MCSP, or bundle must comply with the following requirements, in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies:

(a) An EMTU must be able to transmit all automatically-generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement under § 600.1504.

(b) When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention.

(c) Position reports must contain all of the following:

(1) Unique identification of an EMTU within the communications class;

(2) Date (year/month/day with century in the year) and time stamp (GMT) of the position fix; and

(3) Position fixed latitude and longitude, including the hemisphere of each, which comply with the following requirements:

(A) The position fix precision must be to the decimal minute hundredths; and

(B) Accuracy of the reported position must be within 100 meters.

(d) An EMTU must have the ability to:

(1) Store 1000 position fixes in local, non-volatile memory;

(2) Allow for defining variable reporting intervals between 5 minutes and 24 hours; and

(3) Allow for changes in reporting intervals remotely and only by authorized users.

(e) An EMTU must generate specially identified position reports upon:

(1) Antenna disconnection;

(2) Loss of positioning reference signals;

(3) Loss of the mobile communications signals;

(4) Security events, power-up, power down, and other status data;

(5) The vessel crossing a pre-defined geographic boundary; or

(6) A request for EMTU status information such as configuration of programming and reporting intervals.

§ 600.1504 Latency requirement.

(a) Ninety percent of all pre-programmed or requested Global Positioning System position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods).

(b) NMFS will continually examine position reports by region and by type-approval holder.

(c) Exact dates for calculation of latency will be chosen by NMFS. Days in which isolated and documented system outages occur will not be used by NMFS to calculate a type-approval holder's latency.

§ 600.1505 Messaging.

An EMTU must provide for the following capabilities:

(a) Messaging from vessel to shore, and from shore to vessel by authorized entities, must have a minimum supported message length of 1kb.

(b) There must be a confirmation of delivery function that allows a user to ascertain whether a specific message was successfully transmitted to the MCS email server(s).

(c) Notification of failed delivery to the EMTU must be sent to the sender of the message. The failed delivery notification must include sufficient information to identify the specific message that failed and the cause of failure (*e.g.;* invalid address, EMTU switched off, etc.).

(d) The EMTU must have an automatic retry feature in the event that a message fails to be delivered.

(e) The EMTU user interface must:

(1) Support an "address book" capability and a function permitting a "reply" to a received message without re-entering the sender's address;

(2) Provide the ability to review by date order, or by recipient, messages that were previously sent. The EMTU terminal must support a minimum message history of 50 sent messages—commonly referred to as an "Outbox" or "Sent" message display; and

(3) Provide the ability to review by date order, or by sender, all messages received. The EMTU terminal must support a minimum message history of at least 50 messages in an inbox.

§ 600.1506 Electronic forms.

(a) An EMTU and its forms software must support a minimum of 20 Electronic Forms, and meet the following requirements:

(1) *Form validation.* Each field on a form must be capable of being defined as Optional, Mandatory, or Logic Driven. Mandatory fields are those fields that must be entered by the user before the form is complete. Optional fields are those fields that do not require data entry. Logic driven fields have their attributes determined by earlier form selections. Specifically, a logic driven field must allow for selection of options in that field to change the values available as menu selections on a subsequent field within the same form;

(2) *Form selection.* A user must be able to select forms from a menu on the EMTU;

(3) *Data entry, form review, and transmission failure.* A user must be able to populate a form based on the last values used and "modify" or "update" a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission;

(4) *VMS position report.* Each form must capable of including VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and unable to be manually entered or altered; and

(5) *Delivery format for form data.* Delivery of form data to NMFS must employ the same transport security and reliability as VMS position and declaration reports. The SMTP protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain "," (comma) characters must be quoted. XML representations must use the field label to define the XML element that contains each field value.

(b) *Updates to forms.* (1) The EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation.

(2) From time to time, NMFS may provide type-approved vendors with requirements for new forms or modifications to existing forms. NMFS may also provide notice of forms and form changes through the NMFS Work Order System. Type-approved vendors will be given at least 60 calendar days to complete their implementation of new or changed forms. Vendors will be capable of, and responsible for translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

§ 600.1507 Communications security.

Communications between an EMTU and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU and MCS must have mechanisms to prevent to the extent possible:

(a) Sniffing and/or interception during transmission from the EMTU to MCS;

(b) Spoofing;

(c) False position reports sent from an EMTU;

(d) Modification of EMTU identification;

(e) Interference with GMDSS or other safety/distress functions;

(f) Introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission, and the VMS system; and

(g) The EMTU terminal from communicating with, influencing, or interfering with the Global Positioning System antenna or its functionality, position reports, or sending of position reports. The position reports must not be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

§ 600.1508 Customer service.

The type-approval holder is responsible for ensuring that customer service includes:

(a) Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round;

(b) Response times for customer service inquiries that shall not exceed 24 hours;

(c) Warranty and maintenance agreements;

(d) Escalation procedures for resolution of problems;

(e) Established facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs;

(f) Assistance to fishers in the diagnosis of the cause of communications anomalies;

(g) Assistance in resolving communications anomalies that are traced to the EMTU/MTU; and

(h) Assistance to NMFS Office of Law Enforcement and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or purchase agreements, work orders or contracts.

§ 600.1509 General.

(a) An EMTU must have the durability and reliability necessary to meet all requirements of §§ 600.1502 through 600.1507 regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna must be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

(b) PII and Other Protected Information. Personally identifying information (PII) and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII). A type-approval holder is responsible for ensuring that:

(1) All PII and other protected information is handled in accordance with applicable state and federal law;

(2) All PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or arising from participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel;

(3) Any release of PII or other protected information beyond authorized entities must be requested and approved in writing, as appropriate, by the submitter of the data in accordance with 16 U.S.C. 1881a, or by NMFS; and

(4) Any PII or other protected information sent electronically by the type-approval holder to the NMFS Office of Law Enforcement must be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

§ 600.1510 Notification of type-approval.

(a) If a request made pursuant to § 600.1501 (type-approval) or § 600.1513 (renewal) is approved or partially approved, NMFS will issue a type-approval letter and publish a notice in the **Federal Register** to indicate the specific EMTU model, MCSP, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCSP, or bundle is approved for use.

(b) The NMFS Office of Law Enforcement will maintain a list of type-approved EMTUs, MCSPs, and bundles on a publicly available Web site and provide copies of the list upon request.

§ 600.1511 Changes or modifications to type-approvals.

Type-approval holders must notify NMFS Office of Law Enforcement (OLE) in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration, MCS or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process.

§ 600.1512 Vessel Monitoring System type-approval period.

A type-approval or type-approval renewal is valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to § 600.1510, subject to the revocation process at § 600.1514. All MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval will expire [*DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]. The type-approval holder may request a type-approval renewal as provided in § 600.1513.

§ 600.1513 Type-approval renewal.

At least 30 days, but no more than six months, prior to the end of the type-approval period, a type-approval holder may seek a type-approval renewal by sending a written renewal request letter and information and documentation required under this section to: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, Silver Spring, Maryland 20910.

(a) In a type-approval renewal request letter, the type-approval holder should indicate whether the holder is seeking renewal of an MTU, EMTU, MSC, or bundle and must:

(1) Identify the NOAA region(s) or Federal fisheries for which renewal is sought;

(2) Certify that the features, components, configuration and services of the type-approved MTU, EMTU, MCS or bundle remain in compliance with the standards set out in §§ 600.1502 through 600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and requirements in effect for the region(s) and/or Federal fisheries identified under paragraph (a)(1) of this section that require use of VMS; and

(3) Certify that, since the type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of the type-approved configuration.

(b) The type-approval holder must include a table with the renewal request letter that lists in one column, each requirement set out in §§ 600.1502 through 600.1509 and regulations described under paragraph (a)(2) of this section. For an MTU, instead of the requirements at §§ 600.1502 through 600.1509, the table must list any requirements applicable when the MTU was originally type-approved. NMFS' Office of Law Enforcement (OLE) will provide a template for the table upon request. The type-approval holder must indicate in subsequent columns in the table:

(1) Whether the requirement applies to the type-approval;

(2) Whether the requirement is still being met;

(3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;

(4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and

(5) The date that any modifications or replacements were made.

(c) If the type-approval renewal is for an MCS or bundle, the type-approval holder seeking renewal must also provide the following statistical information on the transmission and processing of vessel position reports from onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center.

(1) The statistical information will, at a minimum, show:

(i) Successful position report transmission and delivery rates;

(ii) The rate of position report latencies; and

(iii) The minimum/maximum/average lengths of time for those latencies.

(2) The statistical information will be demonstrated:

(i) In graph form;

(ii) For each NMFS region and any relevant international agreement area and relevant high seas area; and

(iii) Using data from six full and consecutive months for all of the type-approval holder's U.S. federal fishery customers.

(d) Within 30 days after receipt of a complete renewal request letter, NMFS OLE will notify the type-approval holder of its decision to approve or partially approve the request as provided in § 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

(e) The type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial or partial denial of the renewal request. The type approval holder must submit this response within 21 calendar days of the date of the NMFS OLE letter sent under paragraph (d) of this section.

(f) If any additional information is submitted under paragraph (e) of this section, NMFS OLE, after reviewing such information, may either notify the type-approval holder of its decision to approve or partially approve the renewal request as provided in § 600.1510 or determine that the renewal request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1514 Type-approval revocation process.

(a) If at any time, a type-approved EMTU, MCS or bundle fails to meet requirements at §§ 600.1502 through 600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, the NMFS Office of Law Enforcement (OLE) may issue a Notification Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS or bundle that allegedly fails to comply with type-approval regulations and requirements;

(2) Identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure;

(3) Cites relevant regulations and requirements under this subpart;

(4) Describes the indications and evidence of the alleged failure;

(5) Provides documentation and data demonstrating the alleged failure;

(6) Sets a Response Date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and

(7) Explains the type-approval holder's options if the type-approval

holder believes the Notification Letter is in error.

(b) NMFS will establish a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the Notification Letter.

(c) A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

(d) If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written Objection Letter to NMFS on or before the Response Date. Within 21 calendar days of the date of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the issue. The meeting may be in person, conference call, or webcast. If modifications to any part of the Notification Letter are required, then NMFS will issue a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

(e) The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

(f) If the failure to comply with type-approval regulations and requirements cannot be resolved through this process, the NMFS OLE Director will issue a Revocation Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS, or bundle for which type-approval is being revoked;

(2) Summarizes the failure to comply with type-approval regulations and requirements, including describing its urgency and impact;

(3) Summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure;

(4) States that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred;

(5) States that no new installations of the revoked unit will be permitted in any NMFS-managed fishery requiring the use of VMS;

(6) Cites relevant regulations and requirements under this subpart;

(7) Explains why resolution was not achieved;

(8) Advises the type-approval holder that:

(i) The type-approval holder may reapply for a type-approval under the process set forth in § 600.1501, and

(ii) A revocation may be appealed pursuant to the process under § 600.1515.

§ 600.1515 Type-approval revocation appeals process.

(a) If a type-approval holder receives a Revocation Letter pursuant to § 600.1514, the type-approval holder may file an appeal of the revocation to the NMFS Assistant Administrator.

(b) An appeal must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder may not request an extension of time to file an appeal.

(c) An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and refuting the failures summarized in the Revocation Letter.

(d) The NMFS Assistant Administrator may, in his or her discretion, affirm, vacate, or modify the Revocation Letter and will send a letter to the type-approval holder explaining his or her determination, within 21 calendar days of receipt of the appeal. The NMFS Assistant Administrator's determination constitutes the final agency decision.

§ 600.1516 Revocation effective date and notification to vessel owners.

(a) Following issuance of a Revocation Letter pursuant to § 600.1514 and any appeal pursuant to § 600.1515, NMFS will provide notice to all vessel owners impacted by the type-approval revocation via letter and **Federal Register** notice. NMFS will provide information to impacted vessel owners on:

(1) The next steps vessel owners should take to remain in compliance with regional and/or national VMS requirements;

(2) The date, 60–90 calendar days from the notice date, on which the type-approval revocation will become effective;

(3) Reimbursement of the cost of a new type-approved EMTU, should funding for reimbursement be available pursuant to § 600.1518.

§ 600.1517 Litigation support.

(a) All technical aspects of a type-approved EMTU/MTU, MCS or bundle are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance.

(b) The type-approval holder must, as a requirement of the holder's type-approval, provide technical and expert support for litigation to substantiate the EMTU, MCS or bundle capabilities to establish NMFS Office of Law Enforcement cases against violators, as needed. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(c) The type-approval holder will be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations.

§ 600.1518 Reimbursement opportunities for revoked vessel Monitoring System Type-approved products.

(a) Subject to the availability of funds, vessel owners may be eligible for reimbursement payments for a replacement EMTU if:

(1) All eligibility and process requirements specified by NMFS are met as described in NMFS Policy Directive 06–102; and

(2) The replacement type-approved EMTU is installed on the vessel, and reporting to NMFS Office of Law Enforcement; and

(3) The type-approval for the previously installed EMTU has been revoked by NMFS; or

(4) NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing unit's service life.

(b) The cap for individual reimbursement payments is subject to

change. If this occurs, NMFS Office of Law Enforcement will publish a notice in the Federal announcing the change.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.9, revise paragraph (a) and paragraph (d) to read as follows:

§ 648.9 VMS vendor and unit requirements.

(a) *Approval.* The type-approval requirements for VMS MTUs and MCSPs for the Greater Atlantic Region are those as published by the NMFS Office of Law Enforcement (OLE) in the **Federal Register**, and are available upon request. Both the national type-approval requirements at 50 CFR subpart Q and any established regional standards must be met in order to receive approval for use in the Greater Atlantic Region. The NMFS OLE Director shall approve all MTUs, MCSPs, and bundles including those operating in the Greater Atlantic Region.

* * * * *

(d) *Revocations.* Revocation procedures for type-approvals are at 50 CFR 600.1514. In the event of a revocation, NMFS will provide information to affected vessel owners as explained at 50 CFR 600.1516. In these instances, vessel owners may be eligible for the reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

[FR Doc. 2014–21271 Filed 9–8–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140214140–4140–01]

RIN 0648–BD92

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Seabird Avoidance Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a Seabird Avoidance Program in the Pacific Coast Groundfish Fishery. The proposed rule was recommended by the Pacific Fishery Management Council (Council) in November 2013 and is specifically designed to minimize the take of ESA-listed short-tailed albatross (*Phoebastria albatrus*). A 2012 U.S. Fish and Wildlife Service Biological Opinion required NMFS to initiate implementation of regulations within 2 years mandating the use of seabird avoidance measures by vessels greater than or equal to 55 feet length overall (LOA) using bottom longline gear to harvest groundfish. The seabird avoidance measures, including streamer lines that deter birds from ingesting baited hooks, are modeled after a similar regulatory program in effect for the Alaskan groundfish fishery.

DATES: Comments on this proposed rule must be received on or before October 9, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0099, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0099* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Steve Copps.
- Fax: 206–526–6736; Attn: Steve Copps.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Copps, 206–526–6158; (fax) 206–526–6736; *steve.copps@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of the proposed rule is to reduce interactions between ESA-listed seabirds and groundfish longline gear. Many seabirds attack baited hooks as the longline is being set and become lethally hooked and drowned. The proposed rule would amend the regulations governing the Pacific Coast Groundfish Fishery (fishery) to require seabird avoidance measures—specifically the use of streamer lines and related provisions similar to those currently mandated in the Alaskan groundfish fishery—by vessels 55 ft LOA or greater in the bottom longline fishery.

The proposed rule is needed to minimize takes of endangered short-tailed albatross and comply with a 2012 Biological Opinion (Opinion) issued by the U.S. Fish and Wildlife Service. The 2012 Opinion evaluated the risks of continued operation of the Pacific Coast Groundfish Fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by certain longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from ESA section 9 prohibition regarding the take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross contained in the Opinion, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded.

The proposed rule would require streamer lines, sometimes referred to as tori or bird-scaring lines, to be deployed as the longline gear is being set. A streamer line effectively fences off the longline from seabird interactions. The streamer line is a line (typically 50-fathoms or 90-meters long) that extends from a high point near the stern of the vessel to a drogue (usually a buoy with a weight). As the vessel moves forward the drogue creates tension in the line producing a span from the stern where the streamer line is aloft. The aloft section includes streamers made of UV

protected, brightly colored tubing spaced every 16 feet (5 meters). Streamers must be heavy enough to maintain a near-vertical fence in moderate to high winds. Individual streamers should extend to the water to prevent aggressive birds from getting to the groundline. When deployed in pairs—one from each side of the stern—streamer lines create a moving fence around the sinking groundline reducing or eliminating bird interactions. Streamer lines have been effective at reducing seabird bycatch in fisheries throughout the world, including Alaskan fisheries that are similar to Pacific Coast Groundfish Fisheries.

In addition to this proposed regulatory action, NMFS has worked in collaboration with academia, NGOs, the fishing industry, coastal tribes, and Washington Sea Grant to develop a multi-dimensional seabird conservation initiative for the Pacific Coast Groundfish Fishery. The initiative includes research, industry outreach, and making free streamer lines available to any Pacific Coast longliner to encourage voluntary use. The importance of the initiative was emphasized in 2011 by the take of a short-tailed albatross in the groundfish longline fishery off Oregon.

This proposed rule would amend the regulations governing the Pacific Coast groundfish fishery to require seabird avoidance measures—specifically the use of streamer lines and related provisions currently mandated in the Alaskan groundfish fishery (50 CFR 679.24(e))—by vessels 55 ft LOA or greater using bottom longline gear pursuant to the Pacific Coast Groundfish Fishery Management Plan (FMP). In sum, the regulation would:

- Require the use of streamer lines in the commercial longline fishery of the Pacific Coast Groundfish Fishery for non-tribal vessels 55 feet in length or greater;
- Require vessels to deploy one or two streamer lines depending on the type of longline gear being set;
- Require that streamer lines meet technical specifications and be available for inspection; and,
- Allow for a rough weather exemption from using streamer lines for safety purposes. The threshold for the rough weather exemption is a Gale Warning as issued by the National Weather Service.

The proposed rule is designed to be consistent with the requirements of the Opinion and responsive to issues raised through the public process and consultation with experts.

Rough-Weather Exemption

NMFS is proposing a rough-weather exemption to the streamer line regulations to address safety-at-sea concerns. NMFS consulted with the longline industry and the Council to identify a weather threshold where the deployment of streamer lines becomes hazardous. Based on these consultations, a National Weather Service Gale Warning is being proposed as the most appropriate threshold. When a Gale Warning is issued by the National Weather Service, fishermen would not be required to deploy streamer lines. This is designed to maintain safety at sea and effective reduction of seabird bycatch.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

NMFS and the Council prepared a draft Environmental Assessment (EA) for this regulation that is available on the Council's Web site at *http://www.pcouncil.org/* or available from NMFS (see **ADDRESSES**).

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis is not required, and none has been prepared. The analysis of the Chief Counsel was as follows:

The proposed action is needed to minimize takes of endangered short-tailed albatross and comply with the 2012 Opinion issued by the U.S. Fish and Wildlife Service, as described previously. This action would implement one of the Terms and Conditions of the Opinion and reduce the risk of exceeding the take limits of short-tailed albatross, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded.

The proposed rule is not expected to have significant direct or indirect socioeconomic impacts because cost of the required streamer lines is currently being subsidized 100% by NMFS. If this subsidy program ends, the cost of the streamer lines would be negligible at $300 per pair. The cost is less than 0.1% of the average affected vessel's 2013 annual average ex-vessel revenue.

Effective July 14, 2014, a business involved in finfish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $20.5 million for all its affiliated operations worldwide (See 79 FR 33647).

NMFS conducted its analysis for this action using the new size standard. The affected entities by this rule are those vessels 55 ft LOA or larger that participate in the fishery or may seek to participate in the fishery. During 2013, 293 vessels used longline gear. Forty of these vessels were 55 ft LOA or larger of which 25 vessels participated in the groundfish fishery. When ranked according to Pacific Coast ex-vessel revenues, the top vessel had revenues far less than $2.0 million and the top 3 vessels averaged $1.3 million in ex-vessel revenues. Average vessel revenues for the affected vessels in 2013 are about $408,000. The average annual per vessel revenue based on Pacific Coast landings information and other information is well below $20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

For the reasons above, the Chief Counsel for Regulation certified that this rule will not have a significant economic impact on a substantial number of small entities.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia

River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior "no jeopardy" conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concluded that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). West coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other west coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions. 77 FR 11493 (Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The 2012 Opinion evaluated the risks of continued operation of the Pacific Coast groundfish fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from the ESA section 9 prohibition regarding take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, or bull trout critical habitat.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Public comment is sought on all aspects of this proposed rule. Send comments to NMFS, West Coast Region at the **ADDRESSES** above.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes.

List of Subjects in 50 CFR Part 660

Fisheries.

Dated: September 4, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S. C. 1801 *et seq.* and 16 U.S. C. 773 *et seq.*

■ 2. In § 660.11, add paragraph (6)(i)(A) to the definition of "Fishing gear" and add the definition for "Seabird" in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear * * *

(6) * * *

(i) * * *

(A) Snap gear means a type of bottom longline gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

* * * * *

Seabird means those bird species that habitually obtain their food from the sea below the low water mark.

* * * * *

■ 3. In § 660.12, paragraph (a)(15) is added to read as follows:

§ 660.12 General groundfish prohibitions.

(a) * * *

(15) Fail to comply with the requirements of the Seabird Avoidance Program described in § 660.61 when commercial fishing for groundfish using bottom longline gear.

* * * * *

■ 4. Add § 660.61 to read as follows:

§ 660.61 Seabird Avoidance Program.

This section contains the requirements of the Seabird Avoidance Program.

(a) *Purpose.* The purpose of the Seabird Avoidance Program is to minimize interactions between fishing gear and seabird species, including short-tailed albatross (*Phoebastria albatrus*).

(b) *Applicability.* The requirements specified in paragraph (c) of this section apply to the following fishing vessels:

(1) Vessels greater than or equal to 55 ft (16.8 m) LOA engaged in commercial

fishing for groundfish with bottom longline gear as defined in § 660.11 pursuant to the gear switching provisions of the Limited Entry Trawl Fishery, Shoreside IFQ Program as specified in § 660.140(k), or pursuant to Subparts E or F of this Part, except as provided in paragraph (b)(2) of this section.

(2) *Exemptions.* The requirements specified in paragraph (c) of this section do not apply to Pacific Coast treaty Indian fisheries, as described at § 660.50, or to anglers engaged in recreational fishing for groundfish, as described in Subpart G of this Part.

(c) *Seabird Avoidance Requirements.*

(1) *General Requirements.* The operator of a vessel described in 660.61(b)(1) must:

(i) Gear onboard. Have onboard the vessel seabird avoidance gear as specified in paragraph (c)(2) of this section;

(ii) Gear inspection. Upon request by an authorized officer or observer, make the seabird avoidance gear available for inspection;

(iii) Gear use. Use seabird avoidance gear as specified in paragraph (c)(2) of this section that meets the standards specified in paragraph (c)(3) of this section while bottom longline and snap gears are being deployed.

(iv) Handling of hooked short-tailed albatross.

(A) Safe release of live short-tailed albatross. Make every reasonable effort to ensure short-tailed albatross brought on board alive are released alive and that, whenever possible, hooks are removed without jeopardizing the life of the bird(s). If the vessel operator determines, based on personal judgment, that an injured bird is likely to die upon release, the vessel operator is encouraged to seek veterinary care in port. Final disposition of an injured bird will be with a Wildlife Rehabilitator. If needed, phone the U.S. Fish and Wildlife Service at 503–231–6179 to assist in locating a qualified Wildlife Rehabilitator to care for the short-tailed albatross.

(B) Dead short-tailed albatross must be kept as cold as practicable while the vessel is at sea and frozen as soon as practicable upon return to port. Carcasses must be labeled with the name of vessel, location of hooking in latitude and longitude, and the number and color of any leg band if present on the bird. Leg bands must be left attached to the bird. Phone the U.S. Fish and Wildlife Service at 503–231–6179 to arrange for the disposition of dead short-tailed albatross.

(C) All hooked short-tailed albatross must be reported to U.S. Fish and Wildlife Service Law Enforcement by the vessel operator by phoning 360–753–7764 (WA); 503–682–6131 (OR); or 916–414–6660 (CA) as soon as practicable upon the vessel's return to port.

(D) If a NMFS-certified fisheries observer is on board at the time of a hooking event, the observer shall be responsible for the disposition of any captured short-tailed albatross and for reporting to U.S. Fish and Wildlife Service Law Enforcement. Otherwise, the vessel operator shall be responsible.

(2) *Gear Requirements.* The operator of a vessel identified in paragraph (b)(1) of this section must comply with the following gear requirements:

(i) Snap gear. Vessels using snap gear as defined at § 660.11 must deploy a minimum of a single streamer line in accordance with the requirements of paragraphs (c)(3)(i)–(ii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(ii) Bottom longline. Vessels using bottom longline gear must deploy streamer lines in accordance with the requirements of paragraphs (c)(3)(i) and (c)(3)(iii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(iii) Weather Safety Exemption. Vessels are exempted from the requirements of paragraph (c)(1)(iii) of this section when a National Weather Service Gale Warning is in effect. This exemption applies only during the time and within the area indicated in the National Weather Service Gale Warning.

(3) *Gear performance and material standards:*

(i) Material standards for all streamer lines. All streamer lines must:

(A) Have streamers spaced a maximum of every 16 ft 5 in (5 m);

(B) Have individual streamers that hang attached to the mainline to 10 in (0.25 m) above the waterline in the absence of wind.

(C) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8-inch polyester line or material of an equivalent density.

(ii) Snap gear streamer standards. For vessels using snap gear, a streamer line must:

(A) Be a minimum length of 147 ft 7 in (45 m).

(B) Be deployed so that streamers are in the air a minimum of 65 ft 7 in (20 m) aft of the stern and within 6 ft 7 in (2 m) horizontally of the point where the main groundline enters the water before the first hook is set.

(iii) Bottom longline streamer line standards. Vessels using bottom longline gear but not snap gear must use paired streamer lines meeting the following requirements:

(A) Streamer lines must be a minimum length of 300 feet (91.4 m);

(B) Streamer lines must be deployed so that streamers are in the air a minimum of 131 ft (40m) aft of the stern for vessels under 100 ft (30.5 m) LOA and 197 ft (60m) aft of the stern for vessels 100 ft (30.5 m) or over.

(C) At least one streamer line must be deployed in accordance with paragraph (c)(3)(iii)(B) before the first hook is set and a second streamer line must be deployed within 90 seconds thereafter.

(D) For vessels deploying bottom longline gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(E) For vessels deploying bottom longline gear from the side, the streamer lines must be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

■ 5. In § 660.140, paragraph (k)(1)(iv) is revised to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(k) * * *

(1) * * *

(iv) The vessel must comply with prohibitions applicable to limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program. Vessels using bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

* * * * *

■ 6. In § 660.230, paragraph (b)(5) is added to read as follows:

§ 660.230 Fixed gear fishery-management measures.

* * * * *

(b) * * *

(5) Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

* * * * *

■ 7. In § 660.330, paragraph (b)(2)(i) is revised to read as follows:

§ 660.330 Open access fishery-management measures.

* * * * *

(b) * * *

(2) * * *

(i) *Fixed gear* (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days. Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

* * * * *

[FR Doc. 2014–21474 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 174
Tuesday, September 9, 2014

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

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee (RAC) will meet in Hamilton, Montana. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. Additional information concerning the Committee, can be found by visiting the Committee's Web site at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Ravalli+County.*

DATES: The meeting will be held September 23, 2014 at 6:30 p.m.

All RAC meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Bitteroot National Forest Supervisor's Office, 1801 North 1st Street, Hamilton, Montana. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bitteroot National Forest Supervisor's Office. Please call ahead at 406–363–7100 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Stevensville District Ranger, by phone at 406–777–5461 or Joni Lubke, Executive Assistant, by phone at 406–363–7100. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Provide information regarding the monitoring of RAC projects, and

(2) Conduct Classroom Without Walls project presentation and assignment of project monitoring.

The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 19, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Joni Lubke, 1801 North 1st Street, Hamilton, Montana 59840; or by email to *jmlubke@fs.fed.us,* or via facsimile to 406–363–7159. Summary/minutes of the meeting will be posted on the Web site listed above within 21 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 26, 2014.

Julie K. King,

Forest Supervisor.

[FR Doc. 2014–21352 Filed 9–8–14; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Nevada Advisory Committee (Committee) to the Commission will convene on Wednesday, September 24, 2014, at 2 p.m. and adjourn at approximately 3 p.m. The meeting will be held by teleconference. The purpose of the meeting is for the Committee to discuss a project on the militarization of police.

This meeting is available to the public through the following toll-free call-in number: 877–446–3914, conference ID: 5777245. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office by September 24, 2014. The mailing address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so to *atrevino@usccr.gov.* Persons that desire additional information should contact Angelica Trevino, Civil Rights Analyst, Western Regional Office, at (213) 894–3437.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are advised to go to

the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, Illinois, September 4, 2014.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–21395 Filed 9–8–14; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kansas Advisory Committee for a Meeting To Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting on Wednesday, September 24, 2014, for the purpose of discussing two potential project topics for the committee to study in the coming year: Equal educational opportunity in Kansas and voting rights in Kansas. The committee will discuss memos prepared by regional staff.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–364–3109, conference ID: 2276277. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by October 24, 2014. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Missouri Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
12:00 p.m. to 12:10 p.m.: Elizabeth Kronk Warner, Chair
Discussion of Equal Opportunity in Education memo
12:10 p.m. to 12:30 p.m.: Leen Nachawati, USCCR intern, Kansas Advisory Committee
Discussion of Voting Rights in Kansas
12:30 p.m. to 12:50 p.m.: Annie Myers, USCCR intern, Kansas Advisory Committee
Planning Next Steps
12:50 p.m. to 1:00 p.m.
Adjournment
1:00 p.m.

DATES: The meeting will be held on Wednesday, September 24, 2014, at 12:00 p.m.

Public Call Information:
Dial: 888–364–3109
Conference ID: 2276277

Dated: September 4, 2014.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2014–21396 Filed 9–8–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S. West Coast Commercial Albacore Fishery Cost-Earnings Survey.

OMB Control Number: 0648-xxxx.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 270.

Average Hours per Response: 2 hours, 30 minutes.

Burden Hours: 675.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect economic information for fishing vessels in the West Coast Commercial Albacore Fishery. Information about revenues, variable and fixed costs, capital investment, vessel characteristics, and employment would be collected from vessel owners for a stratified random sample of vessels in this fishery. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers. Therefore, the data will be used to strengthen and improve fishery management decision-making, satisfy legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statutes.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: September 3, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–21323 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2014]

Foreign-Trade Zone 75—Phoenix, Arizona; Notification of Proposed Production Activity; Orbital Sciences Corporation (Satellites and Space Craft Launch Vehicles), Gilbert, Arizona

Orbital Sciences Corporation (OSC), an operator of Foreign-Trade Zone (FTZ) 75, submitted a notification of proposed production activity to the FTZ Board for its facility in Gilbert, Arizona, within FTZ 75. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 28, 2014.

OSC already has authority to produce satellites and space craft launch vehicles within Site 10 of FTZ 75. The current request would add a foreign component (aluminum cable tie mounts) to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt OSC from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, OSC would be able to choose the duty rate during customs entry procedures that applies to finished satellites and space craft launch vehicles (free) for the foreign status aluminum cable tie mounts and the components in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 20, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Pierre Duy at *Pierre.Duy@trade.gov,* or (202) 482–1378.

Dated: September 3, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–21462 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1948]

Reorganization of Foreign-Trade Zone 160 Under Alternative Site Framework; Anchorage, Alaska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Municipality of Anchorage, grantee of Foreign-Trade Zone 160, submitted an application to the Board (FTZ Docket B–87–2013, docketed September 19, 2013) for authority to reorganize under the ASF with a service area of the Municipality of Anchorage, within and adjacent to the Anchorage U.S. Customs and Border Protection port of entry, and FTZ 160's existing Sites 1 through 7 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (78 FR 59914–59915, September 30, 2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 160 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 through 7 if not activated by 08/31/2019.

Signed at Washington, DC, this 29th day of August 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–21470 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 140305199–4619–02]

Notice of Termination of Selected National Voluntary Conformity Assessment Systems Evaluation Program Services

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Termination of Selected NVCASE Program Services.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the termination of the Organic Production and Processing sub-program offered by NIST's National Voluntary Conformity Assessment Systems Evaluation (NVCASE) program, effective January 1, 2016. NIST takes this action because there are now suitable alternative paths to foreign market access, and there would be no significant public disadvantage to terminating the Organic Production and Processing sub-program.

DATES: Effective January 1, 2016, the NVCASE sub-program on Organic Production and Processing will be terminated.

ADDRESSES: Questions or comments regarding NVCASE should be directed to the NVCASE Program Manager, National Voluntary Conformity Assessment Systems Evaluation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, or by email to *ramona.saar@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Ramona Saar, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100, email to *ramona.saar@nist.gov,* or phone 301–975–5521.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) administers the National Voluntary Conformity Assessment Systems Evaluation (NVCASE) program under regulations

found in Part 286 of Title 15 of the Code of Federal Regulations.

Under the NVCASE program NIST evaluates U.S.-based conformity assessment bodies in order to be able to provide assurances to a foreign government that qualifying bodies meet that government's requirements and can provide results that are acceptable to that government. The program is intended to provide a technically-based U.S. approval process for U.S. industry to gain foreign market access.

On December 6, 2002, NIST received a request from a U.S. accreditation body to establish a sub-program, under the NVCASE program, for Organic Production and Processing. The stated objectives of the request were to provide confidence in the quality of this accreditation body's work, and to provide assurance that this accreditation body complied with the requirements of some foreign governments, thus facilitating the export of U.S. products.

NIST, having determined that there was no satisfactory recognition alternative available and that there was evidence that significant public disadvantage would result from the absence of any alternative, established the NVCASE sub-program for Organic Production and Processing on November 4, 2003, following a public workshop held on May 9, 2003. A notice was published in the **Federal Register** on November 4, 2003, announcing the establishment of the program (68 FR 62434).

In the decade since the establishment of the sub-program, the United States has made numerous trade arrangements to facilitate the international trade of organic products. The resulting changes in the international requirements have increased international market access for U.S. producers. NIST considers that there are now suitable alternative paths to foreign market access, and that there would be no significant public disadvantage to terminating the Organic Production and Processing sub-program.

In a **Federal Register** notice published on April 15, 2014 (79 FR 21210), NIST requested written comments on the intended termination of the Organic Production and Processing sub-program offered by NVCASE, and announced a 30-day comment period for that purpose. No comments were received.

Accordingly, the NIST NVCASE program announces that it will cease to grant or renew recognition under the Organic Production and Processing sub-program, effective January 1, 2016. Conformity assessment bodies currently recognized under the sub-program will remain recognized until January 1, 2016, provided they continue to meet program requirements.

Dated: August 29, 2014.

Willie E. May,

Associate Director of Laboratory Programs.

[FR Doc. 2014–21412 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sanctuary System Business Advisory Council: Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council (Council). The meeting is open to the public, and participants may provide comments at the appropriate time during the meeting.

DATES: The meeting will be held Wednesday, September 24, 2014, from 9:00 a.m. to 5:00 p.m. EDT. An opportunity for public comment will be provided at 4:35 p.m. EDT. These times and the agenda topics described below are subject to change.

ADDRESSES: The meeting will be held in the Knott Harbor View Room of the National Aquarium, 501 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Rebecca Holyoke, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–7264, Fax: 301–713–0404; email: *rebecca.holyoke@noaa.gov*).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Keys, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (Council) has been formed to provide advice and recommendations to the Director regarding the relationship of the ONMS with the business community. Additional information on the Council can be found at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

Matters To Be Considered: The meeting will provide an opportunity for council representatives to hear how national marine sanctuaries are connected to users, communities, corporations, and economies and the avenues being pursued to enhance these connections. Advisory council representatives will be asked to provide advice on how ONMS can enhance its connections, programming, and marketing to expand its reach beyond a subset of communities. The agenda is subject to change. The agenda is available at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

Authority: 16 U.S.C. 1431, *et seq.*

Federal Domestic Assistance Catalog Number 11 .429 Marine Sanctuary Program.

Dated: August 13, 2014.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–21536 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD163

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Block Island Wind Farm

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Deepwater Wind Block Island, LLC (DWBI) to take marine mammals, by harassment, incidental to construction of the Block Island Wind Farm.

DATES: Effective October 31, 2014, through October 30, 2015. A copy of the IHA and application are available by

writing to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

An electronic copy of the application and a list of references used in this document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. NMFS prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in August 2014, which are available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8477.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On March 11, 2013, NMFS received an application from DWBI for the taking of marine mammals incidental to construction of the Block Island Wind Farm. The application went through a series of revisions and the final version was submitted on October 17, 2013. NMFS determined that the application was adequate and complete on December 2, 2013.

DWBI plans to develop the Block Island Wind Farm (BIWF), a 30-megawatt offshore wind farm. The planned activity could begin in late 2014 and last through late 2015; however, portions of the project will only occur for short, sporadic periods of time over the 1-year period. The following specific aspects of the planned activities are likely to result in the take of marine mammals: impact pile driving and the use of dynamically positioned (DP) vessel thrusters. Take, by Level B Harassment only, of individuals of nine species is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

The BIWF will consist of five, 6-megawatt wind turbine generators (WTGs), a submarine cable interconnecting the WTGs, and a transmission cable. Construction of the BIWF will involve the following activities: cable landfall construction on Block Island via a short-distance horizontal directional drill (HDD) from an excavated trench box located on Crescent Beach, Block Island; jacket foundation installation; inter-array and export cable installation; and WTG installation. Installation of the jacket foundation will require impact pile driving. The generation of underwater noise from impact pile driving and the DP vessel thruster may result in the incidental take of marine mammals.

In connection with the BIWF, Deepwater Wind Block Island Transmission System, LLC (a different applicant) plans to construct the Block Island Transmission System, a bi-directional submarine transmission cable that will run from Block Island to the Rhode Island mainland. Incidental take of marine mammals resulting from construction of the Block Island Transmission System will be assessed separately.

Dates and Duration

Construction activities could begin in late 2014 and are scheduled to be complete by December 2015. The anticipated project work windows are provided in Table 1.

TABLE 1—ANTICIPATED PROJECT WORK WINDOWS

Activity	Anticipated work window
Contracting, mobilization, and verification	January 2014–December 2014.
Onshore short-distance HDD installation	December 2014–June 2015.
Onshore/offshore long-distance HDD installation	January 2015–June 2015.
Onshore cable installation	October 2014–May 2015.
Offshore cable installation	April 2015–August 2015.
Landfall demobilization and remediation	May 2015–June 2015.
Foundation fabrication and transportation	October 2015–September 2015.
WTG jacket foundation—non-pile driving activity	April 2015–July 2015 or August 2015–October 2015.
WTG jacket foundation—pile driving	May 2015–July 2015 or August 2015–October 2015.
WTG installation and commissioning	July 2015–December 2015.

NMFS proposed to issue an authorization effective October 31, 2014 through October 30, 2015, based on the anticipated work windows for in-water construction that could result in the incidental take of marine mammals. While project activities may occur for 1 year, in-water pile driving is only expected to occur for up to 20 days (4 days for each WTG). Use of the DP vessel thruster during cable installation activities is expected to occur for 28

days maximum. Impact pile driving will occur during daylight hours only, starting approximately 30 minutes after dawn and ending 30 minutes prior to dusk, unless a situation arises where stopping pile driving will compromise safety (either human health or environmental) and/or the integrity of the project. Cable installation (and subsequent use of the DP vessel thruster) will be conducted 24 hours per day.

Specified Geographic Region

The offshore components of the BIWF will be located in state territorial waters. Construction staging and laydown for offshore construction is planned to occur at the Quonset Point port facility in North Kingstown, Rhode Island. The WTGs will be located on average of about 4.8 kilometers (km) southeast of Block Island, and about 25.7 km south of the Rhode Island mainland. The WTGs will be arranged in a radial configuration spaced about 0.8 km apart. The inter-array cable will connect the five WTGs for a total length of 3.2 km from the northernmost WTG to the southernmost WTG (Figure 1.2–1 of DWBI's application). Water depths along the WTG array and inter-array cable range up to 23.3 meters (m).

The submarine portions of the export cable will be installed by a jet plow supported by a DP vessel. The export cable will originate at the northernmost WTG and travel 10 km to a manhole on Block Island. Water depths along the export cable submarine route range up to 36.9 m. Terrestrial cables, an interconnection switchyard, and other ancillary facilities associated with the BIWF will be located in the town of New Shoreham in Washington County, Rhode Island.

Detailed Description of Activities

The following sections provide additional details associated with each portion of the BIWF construction.

1. Landfall Construction

On Block Island, DWBI plans to bring the export cable ashore via a short-distance HDD. DWBI will use the short-distance HDD to install either a steel or high density polyethylene conduit for the cable under the beach. The excavated trench on Crescent Beach will be approximately 2 to 3 m wide, 4 m deep, and 11 m long. Spoils from the trench excavation will be stored on the respective beach and returned to the trench after cable installation. The HDD will enter through the shore side of the excavated trench and the cable conduit will be installed between the trench and the manhole. The export cable will then be pulled from the excavated trench into the respective manhole through the newly installed conduit. Sheet piling installations will occur at low tide.

The coupling of land-based vibrations and nearshore sounds into the underwater acoustic field is not well understood and cannot be accurately predicted using current models. However, because the excavation for the cable trench and the HDD installation on the beach will occur onshore and because sand is generally a very poor conductor of vibrations, NMFS considers it unlikely that the underwater noise generated from either of these installations will result in harassment of marine mammals.

A jet plow, supported by a DP cable installation barge, will be used to install the export cable below the seabed. The jet plow will be positioned over the trench at the mean low water mark on Crescent Beach and be pulled from shore by the cable installation barge.

2. Jacket Foundation Installation

Offshore installation of the WTG jacket foundations will be carried out from a derrick barge moored to the seabed. Each jacket foundation will be lifted from the derrick barge, placed onto the seafloor, leveled, and made ready for piling. The piles will then be inserted above sea level into each corner of the jacket foundation in two segments. First, the lead sections of the piles will be inserted into the jacket foundation legs and then driven into the seafloor. Then, the second length of the piles will be placed on the lead pile section and welded into place. The jacket foundation piles will then be driven into the seafloor to the final penetration design depth or until refusal, whichever comes first. DWBI anticipates a final pile depth of up to 76.2 m. For the purpose of analysis, DWBI assumes that impact pile driving will start with a 200 kilojoule (kJ) rated hydraulic hammer, followed by a 600 kJ rated hammer to reach final design penetration. A 1,000-kilowatt unit will power the hammers. Changing out the hammers from 200 to 600 kJ will be required once the driving forces become ineffective, and will take about 30 to 60 minutes to complete, during which time impact pile driving will cease. Once pile driving is complete, the top of the piles will be welded to the jacket foundation legs using shear plates and cut to allow for horizontal placement of the WTG transition deck. Finally, the boat landing and transition decks will be welded into place.

Pile driving activities will occur during daylight hours only, unless a situation arises where stopping pile driving will compromise safety (either human health or environmental) and/or the integrity of the project. Installation of each jacket foundation will require 7 days to complete; the duration of pile driving within this timeframe is anticipated to be 4 days for each jacket foundation. The jacket foundations will be installed one at a time at each WTG location for a total of 5 weeks assuming no delays due to weather or other circumstances.

3. Offshore Cable Installation

DWBI will use a jet plow, supported by a DP cable installation barge, to install the export cable and inter-array cable below the seabed. The jet plow will be positioned over the trench and pulled from shore by the cable installation vessel. The jet plow will likely be a rubber-tired or skid-mounted plow with a maximum width of about 4.6 m, and pulled along the seafloor behind the cable-laying barge with assistance of a non-DP material barge. High-pressure water from vessel-mounted pumps will be injected into the sediments through nozzles situated along the plow, causing the sediments to temporarily fluidize and create a liquefied trench. DWBI anticipates a temporary trench width of up to 1.5 m. As the plow is pulled along the route behind the barge, the cable will be laid into the temporary, liquefied trench through the back of the plow. The trench will be backfilled by the water current and the natural settlement of the suspended material. Umbilical cords will connect the submerged jet plow to control equipment on the vessel to allow the operators to monitor and control the installation process and make adjustments to the speed and alignment as the installation proceeds across the water.

The export cable and inter-array cable will be buried to a target depth of 1.8 m beneath the seafloor. The actual burial depth depends on substrate encountered along the route and could vary from 1.2 to 2.4 m. If less than 1.2 m burial is achieved, DWBI may elect to install additional protection, such as concrete matting or rock piles. At each of the WTGs, the inter-array cable will be pulled into the jacket foundation through J-tubes installed on the sides of the jacket foundations. At the J-tubes, additional cable armoring such as sand bags and/or rocks will be used to protect the inter-array cable.

A DP vessel will be used during cable installation in order to maintain precise coordinates. DP systems maintain their precise coordinates in waters through the use of automatic controls. These control systems use variable levels of

power to counter forces from current and wind. During cable-lay activities, DWBI expects that a reduced 50 percent power level will be used by DP vessels. DWBI modeled scenarios using a source level of 180 dB re 1 micro Pascal for the DP vessel thruster, assuming water depths of 7, 10, 20, and 40 m, and thruster power of 50 percent. Detailed information on the acoustic modeling for this source is provided in Appendix A of DWBI's application (see **ADDRESSES**).

Depending on bottom conditions, weather, and other factors, installation of the export cable and inter-array cable is expected to take 2 to 4 weeks. This schedule assumes a 24-hour work window with no delays due to weather or other circumstances.

4. WTG Installation

The WTGs will be installed upon completion of the jacket foundations and the pull-in of the inter-array cable. The WTGs will be transported by a transportation barge to the BIWF from a temporary storage facility on the mainland. The transportation barge will set up at the installation site adjacent to a jack-up material barge. The jack-up barge legs will be lowered to the seafloor to provide a level work surface and begin the WTG installation. The WTGs will be installed in sections with the lower tower section lifted onto the transition deck followed by the upper tower section.

Installation of each WTG will require 2 days to complete, assuming a 24-hour work window and no delays due to weather or other circumstances. None of the activities associated with installation of the WTGs is expected to result in the harassment of marine mammals.

Comments and Responses

A proposed IHA and request for public comments was published in the **Federal Register** on March 25, 2014 (79 FR 16301). During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (Commission). The Commission's comments are summarized and addressed below. All comments have been compiled and posted at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Comment 1: The Commission recommended that NMFS require DWBI to provide information regarding the data and assumptions used to derive cetacean density estimates.

Response: As stated in section 6 of their application (see **ADDRESSES**), DWBI used sightings per unit effort (SPUE) reported in Kenney and Vigness-Raposa (2009) to derive density estimates for cetacean species in the project area. SPUE is derived by using a measure of survey effort and number of individual cetaceans sighted. SPUE allows for comparison between discrete units of time (i.e., seasons) and space within a project area. SPUE calculated by Kenney and Vigness-Raposa (2009) was derived from a number of sources, all of which are referenced in the application.

Comment 2: The Commission recommended that NMFS require DWBI to address apparent inconsistencies in marine mammal species density estimates between different BIWF activities (impact pile driving and DP vessel thruster use) and in the density estimates for some marine mammal species for this project with those for the related Block Island Transmission System (BITS) project.

Response: The proposed activity for construction of the BIWF could begin in late 2014 and last through late 2015; however, portions of the project will only occur for short, sporadic periods of times over the 1-year period. Therefore the estimates of take of marine mammals were calculated based on density estimates during the predicted seasons within which the specific BIWF activity will occur. The estimates of take for the BITS were also based on the density estimates during the predicted season of the proposed activity. In addition, the location of activities for the BIWF are further offshore and to the south of activities as described for the BITS. Density estimates, as reported by Kenney and Vigness-Raposa (2009), are temporally and spatially variable. Therefore, the maximum seasonal densities within the project areas differ given the specific location and time of year of the activity described.

Comment 3: The Commission recommended that NMFS include in each **Federal Register** notice for proposed incidental harassment authorizations a sufficiently detailed description of the status and distribution of the species of marine mammals likely to be affected by the proposed activities to allow the public to review and comment on the proposed authorization as a stand-alone document.

Response: As required by regulation, section 4 of DWBI's application included a detailed description of the status, distribution, and seasonal distribution of the affected species or stocks of marine animals likely to be affected by such activities (see **ADDRESSES**). As such, the DWBI application was referenced accordingly in the FR notice for the proposed IHA and request for public comments (79 FR 16301, March 25, 2014). Further, the internet Web site for the NMFS Marine Mammal Stock Assessment Reports, which contain information on the biology and local distribution of species potentially affected by this project, was provided in the FR notice for the proposed IHA.

Comment 4: The Commission recommended that NMFS require DWBI to provide estimated source levels associated with HDD and jet plowing activities, and to provide take estimates associated with those activities.

Response: Neither HDD nor jet plow noise were modelled for harassment because all the noise associated with these activities will be in-air. More specifically, the HDD rig will be located on land at Scarborough and Crescent Beaches. As discussed in the FR notice for the proposed IHA and request for public comments (79 FR 16301, March 25, 2014), the coupling of land-based vibrations and nearshore sounds into the underwater acoustic field is not well understood and cannot be accurately predicted using current models. However, because the HDD installation on the beach will occur onshore and because sand is generally a very poor conductor of vibrations, NMFS considers it unlikely that the underwater noise generated from the HDD installation will result in harassment of marine mammals. Regarding jet plow noise, all compressors will be located on the vessel itself and will not affect the surrounding underwater environment. Therefore, noise associated with jet plow activities was also discounted by NMFS as a potential source of harassment.

Comment 5: To reduce the potential for vessel strikes with endangered North Atlantic right whales, the Commission recommended that NMFS require DWBI vessels to reduce speeds to 10 knots or less from November 1 to April 30 in all areas of operation.

Response: In 2008, NMFS promulgated a regulation implementing a mandatory 10-knot speed limit for vessels 65 feet or greater in length in designated seasonal management areas (SMAs) to reduce the threat of ship collisions with right whales (see 50 CFR 224.105). The SMAs were established to provide protection for right whales, and the timing, duration, and geographic extent of the speed restrictions were specifically designed to reflect right whale movement, distribution, and aggregation patterns. The vessel speed restriction is in effect in the mid-Atlantic SMA from November 1 through April 30 to reduce the threat of collisions between ships and right

whales around their migratory route and calving grounds.

Right whales have been observed in or near Rhode Island during all four seasons; however, they are most common in the spring when they are migrating and in the fall during their southbound migration (Kenney and Vigness-Raposa 2009). Portions of the BIWF project area are located within the Mid-Atlantic SMA; thus, to minimize the potential for vessel collision with right whales and other marine mammal species all DWBI vessels associated with the BIWF construction, regardless of their length, will operate at speeds of 10 knots or less from the November 1 to April 30 time period, regardless of whether they are inside or outside of the designated SMA. In addition, all DWBI vessels associated with the BIWF construction will adhere to NMFS guidelines for marine mammal ship striking avoidance (available online at: *http://www.nmfs.noaa.gov/pr/pdfs/education/viewing_northeast.pdf*), including maintaining a distance of at least 1,500 feet from right whales and having dedicated protected species observers who will communicate with the captain to ensure that all measures to avoid whales are taken. NMFS believes that the size of right whales, their slow movements, and the amount of time they spend at the surface will make them extremely likely to be spotted by protected species observers during construction activities within the BIWF project area. NMFS does not anticipate any marine mammals to be impacted by vessel movement because only a limited number of vessels will be involved in construction activities and they will move at slow speeds throughout construction.

Description of Marine Mammals in the Area of the Specified Activity

There are 34 marine mammal species with possible or confirmed occurrence in the area of the specified activity (Table 2).

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Table 2. Marine mammal species with possible or confirmed occurrence in the project area.

Common Name	**Scientific Name**	**Status**	**Occurrence**	**Seasonality**	**Range**	**Abundance**
Toothed whales (Odontocetes) Atlantic white-sided dolphin	Lagenorhynchus acutus	-	Confirmed	Year-round	North Carolina to Canada	23,390
Atlantic spotted dolphin	Stenella frontalis					50,978
Bottlenose dolphin	Tursiops truncatus	Strategic (northern coastal stock)				9,604
Short-beaked common dolphin	Delphinus delphis	-	Common	Year-round	North Carolina to Canada	120,743
Harbor porpoise	Phocoena phocoena	Strategic	Common	Year-round	North Carolina to Greenland	89,054
Killer whale	Orcinus orca					Unknown
False killer whale	Pseudorca crassidens					Unknown
Long-finned pilot whale	Globicephala malaena					12,619
Short-finned pilot whale	Globicephala macrohynchus					24,674
Risso's dolphin	Grampus griseus					20,479
Striped dolphin	Stenella coeruleoalba					94,462
White-beaked dolphin	Lagenorhynchus albirostris					2,003
Sperm whale	Physeter macrocephalus	Endangered				4,804
Pygmy sperm whale	Kogia breviceps	Strategic				395
Dwarf sperm whale	Kogia sima					395
Cuvier's beaked whale	Ziphius cavirostris	Strategic				3,513
Blainville's beaked whale	Mesoplodon densirostris					3,513
Gervais' beaked whale	Mesoplodon europaeus	Strategic				3,513
True's beaked whale	Mesoplodon mirus	Strategic				3,513
Bryde's whale	Balaenoptera edeni					
Northern bottlenose whale	Hyperoodon ampullatus					
Baleen	Balaenoptera	-	Common	Spring,	Caribbean to	8,987

whales (Mysticetes) Minke whale	acutorostrata		(spring and summer)	summer, fall	Greenland	
Blue whale	Balaenoptera musculus	Endangered				Unknown
Fin whale	Balaenoptera physalus	Endangered	Common	Year-round	Caribbean to Greenland	3,985
Humpback whale	Megaptera novaeangliae	Endangered	Confirmed	Year-round	Caribbean to Greenland	11,570
North Atlantic right whale	Eubalaena glacialis	Endangered	Confirmed	Year-round	Southeastern U.S. to Candada	444
Sei whale	Balaenoptera borealis	Endangered				Unknown
Pinnipeds Gray seals	Halichocrus grypus	-	Confirmed	Year-round	New England to Canada	348,900
Harbor seals	Phoca vitulina	-	Common	Spring, summer, winter	Florida to Canada	99,340
Hooded seals	Cystophora cristata					Unknown
Harp seal	Phoca groenlandica					Unknown
West Indian manatee	Trichechus manatus	Endangered				3,802

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The highlighted species in Table 2 are pelagic and/or northern species, or are so rarely sighted that their presence in the project area, and therefore take, is unlikely. These species are not considered further in this IHA notice. The West Indian manatee is managed by the U.S. Fish and Wildlife Service and is also not considered further in this IHA notice. Further information on the biology and local distribution of these species can be found in section 4 of DWBI's application (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Potential Effects of the Specified Activity on Marine Mammals

The FR notice of proposed IHA (79 FR 16301, March 25, 2014) included a summary and discussion of the ways that the types of stressors associated with the specified activity (i.e., impact pile driving and use of the DP vessel thruster) have been observed to impact marine mammals. The "Estimated Take by Incidental Harassment" section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section includes the analysis of how this specific activity will impact marine mammals and considers the content of the "Potential Effects of the Specified Activity on Marine Mammals" section, the "Estimated Take by Incidental Harassment" section, the "Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals, and from that on the affected marine mammal populations or stocks.

Potential effects of the specified activities on marine mammals involve acoustic effects related to sound produced by in-water impact pile driving and use of DP vessel thrusters. Detailed information on these effects was provided in the proposed IHA (79 FR 16301, March 25, 2014) and that information has not changed.

Anticipated Effects on Marine Mammal Habitat

There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the project area. There is also no designated critical habitat for any ESA-listed marine mammals. Harbor seals haul out on Block Island and points along Narragansett Bay, the most important haul-out being on the edge of New Harbor, about 2.4 km from the proposed BIWF landfall on Block Island. The only consistent haul-out locations for gray seals within the vicinity of Rhode Island are around Monomoy National Wildlife Refuge and Nantucket Sound in Massachusetts (more than 80 nautical miles from the project area). NMFS' regulations at 50 CFR 224.105 designated the nearshore waters of the Mid-Atlantic Bight as the Mid-Atlantic SMA for right whales. Mandatory vessel speed restrictions are in place in that SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

The BIWF involves activities that will disturb the seafloor and potentially affect benthic and finfish communities. Installation of the inter-array cable and export cable will result in the temporary disturbance of no more than 3.7 and 11.6 acres of seafloor, respectively. These installation activities will also result in temporary and localized increases in turbidity around the project area. DWBI may also install additional protective armoring in areas where the burial depth achieved is less than 1.2 m. DWBI expects that additional protection will be required at a maximum of 1 percent of the entire submarine cable, resulting in a conversion of up to 0.4 acres of soft substrate to hard substrate along the cable route. During the installation of additional protective

armoring at the cable crossings and as necessary along the cable route, anchors and anchor chains will temporarily impact about 1.8 acres of bottom substrate during each anchoring event.

The installation of the five WTGs will result in a total impact of about 0.35 acres. In this area, soft substrate will be permanently converted to hard substrate. Construction activities associated with the installation of the jacket foundations and WTGs will also result in the temporary disturbance of 28.9 acres of substrate from the placement of jack-up barge spuds, vessel anchors, and associated anchor sweep. Additional disturbance is also expected within the top few inches of substrate from the anchor chains during foundation installation as they rest on the seafloor or sweep across the bottom in response to bottom currents.

Jet-plowing and impacts from construction vessel anchor placement and/or sweep will cause either the displacement or loss of benthic and finfish resources in the immediate areas of disturbance. This may result in a temporary loss of forage items for marine mammals and a temporary reduction in the amount of benthic habitat available for foraging marine mammals in the immediate project area. However, the amount of habitat affected represents a very small percentage of the available marine mammal foraging habitat in the project area. Increased underwater sound levels may temporarily result in marine mammals avoiding or abandoning the area.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable 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).

Mitigation Measures

DWBI will implement the following mitigation measures during impact pile driving and use of the DP vessel thruster:

1. Marine Mammal Exclusion Zone

At the onset of pile driving when the 200 kJ impact pile driving hammer is in use, protected species observers will visually monitor a 200-m radius exclusion zone around each jacket foundation to reduce the potential for injury of marine mammals. After changing to the 600 kJ impact pile driving hammer, protected species observers will visually monitor a 600-m radius exclusion zone. These distances are estimated to be the respective 180-dB isopleths based on DWBI's sound exposure model. A minimum of two observers will be stationed aboard each noise-producing construction support vessel. Each observer will visually monitor a 360-degree field of vision from the vessel. Observers will begin monitoring at least 30 minutes prior to impact pile driving, continue monitoring during impact pile driving, and stop monitoring 30 minutes after impact pile driving has ended. If a marine mammal is seen approaching or entering the relevant 180-dB isopleth (200-m or 600-m) exclusion zones during impact pile driving (and following a 50 percent reduction in energy; see "Delay and Powerdown Procedures" below), DWBI will stop impact pile driving unless it is determined that the reduction will compromise safety (either human health or environmental) and/or the integrity of the project.

2. Soft-Start Procedures

DWBI will use a soft-start (or ramp-up) procedure at the beginning of impact pile driving to alert marine mammals in the area. This procedure will require an initial set of three strikes from the impact hammer at 40 percent energy with a 1-minute waiting period between subsequent 3-strike sets. DWBI will repeat the procedure two additional times. DWBI will initiate a soft-start at the beginning of each day of pile driving, at the beginning of each pile segment, and if pile driving stops for more than 30 minutes. DWBI will not initiate a soft-start if the monitoring zone is obscured by fog, inclement weather, poor lighting conditions, etc.

3. Delay and Powerdown Procedures

DWBI will delay impact pile driving if a marine mammal is observed within the relevant 180-dB isopleth exclusion zone and until the exclusion zone is clear of marine mammals. DWBI will reduce impact pile driving if a marine mammal is seen within or approaching the 200-m or 600-m exclusion zone. DWBI will reduce the hammer energy by 50 percent to a ramp-up level. If a marine mammal continues to move towards the sound source, DWBI will stop impact pile driving operations until the exclusion zone is clear of marine mammals for at least 30 minutes.

4. DP Thruster Power Reduction

A constant tension must be maintained during cable installation and any significant stoppage in vessel maneuverability during jet plow activities will result in damage to the cable. Therefore, during DP vessel operations, DWBI will reduce DP thruster power to the maximum extent possible if a marine mammal approaches or enters a 5-m radius from the vessel (estimated to be the 160-dB isopleth from the vessel). This reduction will not be implemented at the risk of compromising safety and/or the integrity of the BIWF. DWBI will not increase power until the 5-m zone is clear of marine mammals for 30 minutes.

5. Time of Day and Weather Restrictions

DWBI will conduct impact pile driving during daylight hours only, starting approximately 30 minutes after dawn and ending 30 minutes before dusk. If a soft-start is initiated before the onset of inclement weather, DWBI may complete that segment of impact pile driving. DWBI will not initiate new impact pile driving activities until the entire monitoring zone is visible.

6. Vessel Speed Restrictions

All DWBI vessels, regardless of length and location, will operate at speeds of 10 knots or less from November 1 through April 30.

7. Ship Strike Avoidance

DWBI will adhere to NMFS guidelines for marine mammal ship strike avoidance (*http://www.nmfs.noaa.gov/pr/pdfs/education/viewing_northeast.pdf*).

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is

expected to minimize adverse impacts to marine mammals;

- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for 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 action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of continuous noise from use of a DP vessel thruster that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

DWBI submitted a marine mammal monitoring plan as part of the IHA application. It can be found in section 12 of their application (see **ADDRESSES**).

1. Visual Monitoring

DWBI will use two protected species observers (in addition to those used for mitigation) to visually monitor the Level B harassment zone during all impact pile driving. During use of the 200 kJ impact pile driving hammer, a 3.6-km radius will be monitored, and during use of the 600 kJ impact pile driving hammer, a 7-km radius (or maximum distance visible) will be monitored. DWBI will also use two protected species observers to visually monitor a 5-m radius around the vessel during DP vessel thruster use. Observers will estimate distances to marine mammals visually, using laser range finders, or by using reticle binoculars during daylight hours. During night operations (DP vessel thruster use only), observers will use night-vision binoculars. Observers will record their position using hand-held or vessel global positioning system units for each sighting, vessel position change, and any environmental change. Each observer will scan the surrounding area for visual indication of marine mammal presence. Observers will be located from the highest available vantage point on the associated operational platform (e.g., support vessel, barge or tug), estimated to be at least 6 m above the waterline.

Prior to initiation of construction work, all crew members on barges, tugs, and support vessels will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. DWBI will also conduct a briefing with the construction supervisors and crews and observers to define chains of command, discuss communication procedures, provide an overview of the monitoring purposes, and review operational procedures. The DWBI Construction Compliance Manager (or other authorized individual) will have the authority to stop or delay impact pile driving activities if deemed necessary.

2. Acoustic Field Verification

DWBI will conduct field verification of the estimated 200-m and 600-m exclusion zones during impact pile driving to determine whether the proposed distances correspond accurately to the relevant isopleths.

DWBI will take acoustic measurements during impact pile driving of the last half (deepest pile segment) for any given open-water pile and will also measure from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). If the field measurements determine that the actual Level A (180-dB isopleth) and Level B (160-dB isopleth) harassment zones are less than or beyond the proposed distances, a new zone shall be established accordingly. DWBI will notify NMFS and the USACE within 24 hours if a new marine mammal exclusion zone is established that extends beyond the proposed 200-m or 600-m distances. Implementation of a smaller zone will be contingent on NMFS' review and will not be used until NMFS approves the change.

DWBI will also perform field verification of the 160-dB isopleth associated with DP vessel thruster use during cable installation. DWBI will take acoustic measurements from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). Similar to field verification during impact pile driving, the DP thruster power reduction zone may be modified as necessary.

Reporting Measures

Observers will record dates and locations of construction operations; times of observations; location and weather; details of marine mammal sightings (e.g., species, age, numbers, behavior); and details of any observed take.

DWBI will provide the following notifications and reports during construction activities:

- Notification to NMFS and the U.S. Army Corps of Engineers (USACE) within 24-hours of beginning construction activities and again within 24-hours of completion;
- Detailed report of field-verification measurements within 7 days of completion (including: sound levels, durations, spectral characteristics, DP thruster use, etc.) and notification to NMFS and the USACE within 24-hours if a new zone is established;

• Notification to NMFS and USACE within 24-hours if field verification measurements suggest a larger marine mammal exclusion zone;

• Final technical report to NMFS and the USACE within 120 days of completion of the specified activity documenting methods and monitoring protocols, mitigation implementation, marine mammal observations, other results, and discussion of mitigation effectiveness.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), DWBI shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *John.Fiorentino@noaa.gov* and the Greater Atlantic Region Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

DWBI shall not resume its activities until we are able to review the circumstances of the prohibited take. We will work with DWBI to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. DWBI may not resume their activities until notified by us via letter, email, or telephone.

In the event that DWBI discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition), DWBI shall immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *John.Fiorentino@noaa.gov* and the Greater Atlantic Region Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with DWBI to determine whether modifications in the activities are appropriate.

In the event that DWBI discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DWBI will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *John.Fiorentino@noaa.gov* and the Greater Atlantic Region Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. DWBI will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include noise associated with impact pile driving, and noise associated with the use of DP vessel thrusters during cable installation. Harassment could take the form of masking, temporary threshold shift, avoidance, or other changes in marine mammal behavior. NMFS anticipates that impacts to marine mammals will be in the form of behavioral harassment and no take by injury, serious injury, or mortality is authorized. NMFS does not anticipate take resulting from the movement of vessels associated with construction because there will be a limited number of vessels moving at slow speeds over a relatively shallow, nearshore area.

NMFS' current acoustic exposure criteria for estimating take are shown in Table 3 below. DWBI's modeled distances to these acoustic exposure criteria are shown in Table 4. Details on the model characteristics and results are provided in the Underwater Acoustic Report at the end of DWBI's application (see **ADDRESSES**). DWBI and NMFS believe that this estimate represents the worst-case scenario and that the actual distance to the Level B harassment threshold may be shorter.

TABLE 3—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Non-Explosive Sound		
Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises).	160 dB re 1 microPa-m (rms)
Level B Harassment	Behavioral Disruption (for continuous, noise).	120 dB re 1 microPa-m (rms)

TABLE 4—DWBI'S MODELED DISTANCES TO ACOUSTIC EXPOSURE CRITERIA

Activity	Distance to level B harassment (160 or 120 dB)	Distance to level A harassment (180/190 dB)
Impact pile driving (hammer energy = 600 kJ).	7,000 m	600 m
Impact pile driving (hammer energy = 200 kJ).	3,600 m	200 m
DP vessel thruster use	4,750 m	<5 m

DWBI estimated species densities within the project area in order to estimate the number of marine mammal exposures to sound levels above 120 dB (continuous noise) or 160 dB (impulsive noise). DWBI used sightings per unit effort (SPUE) from Kenney and Vigness-Raposa (2009) for relative cetacean abundance and the Northeast Navy OPAREA Density Estimates (DoN, 2007) for seal abundance. Based on multiple reports, harbor seal abundance off the coast of Rhode Island is thought to be about 20 percent of the total abundance for southern New England. Because the seasonality and habitat use of gray seals off the coast of Rhode Island roughly overlaps with harbor seals, DWBI applied this 20 percent estimate to both pinniped species. The 2007 and 2009 density estimates relied upon for this authorization represent the best scientific data available. NMFS is not aware of any efforts to collect more recent density estimates than those relied upon here.

Estimated takes were calculated by multiplying the average highest species density (per 100 km^2) by the zone of influence, multiplied by a correction factor of 1.5 to account for marine mammals underwater, multiplied by the number of days of the specified activity. A detailed description of the DWBI's model used to calculate zones of influence is provided in the Underwater Acoustic Report at the end of their application (see **ADDRESSES**).

DWBI used a zone of influence of 89.6 km^2 and a total construction period of 20 days to estimate take from impact pile driving. This zone of influence is based on use of the largest 600 kJ impact hammer. Jacket foundation installation (requiring impact pile driving) is scheduled to occur between the months of May through July or August through October. DWBI used a zone of influence of 25.1 km^2 and a maximum installation period of 28 days to estimate take from use of the DP vessel thruster during cable installation. The zone of influence represents the average ensonified area across the three representative water depths along the cable route (10 m, 20 m, and 40 m). DWBI expects cable installation to occur between April and August.

To be conservative, DWBI based take calculations on the highest seasonal species density over which impact pile driving and use of the DP vessel thruster was scheduled to occur. DWBI's requested take numbers are provided in Table 5 and this is also the number of takes NMFS is authorizing. DWBI's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Table 5 are the maximum number of animals that may be harassed during impact pile driving (i.e., DWBI assumes that each exposure event is a different animal). These estimates do not account for mitigation measures that DWBI will implement during the specified activities.

DWBI did not request, and NMFS is not authorizing, take from vessel strike. We do not anticipate marine mammals to be impacted by vessel movement because a limited number of vessels will be involved in construction activities and they will move at slow speeds (10 knots or less) throughout construction.

TABLE 5—DWBI'S ESTIMATED TAKE FOR THE BIWF PROJECT

Common species name	Maximum seasonal density (per 100 km^2)	Estimated take by level B harassment	Maximum seasonal density (per 100 km^2)	Estimated take by level B harassment	Total estimated take
	Impact pile driving	DP Vessel thruster			
Atlantic white-sided dolphin	7.46	201	1.23	13	214
Short-beaked common dolphin	8.21	221	2.59	28	249
Harbor porpoise	0.47	13	0.74	8	21
Minke whale	0.44	12	0.14	2	14
Fin whale	1.92	52	2.15	23	75
Humpback whale	0.11	3	0.11	2	5
North Atlantic right whale	0.04	2	0.06	1	3
Gray seal	14.16	77	14.16	30	107
Harbor seal	9.74	53	9.74	21	74

TABLE 6—SPECIES INFORMATION AND TAKE AUTHORIZED BY NMFS

Common species name	Authorized take	Abundance of stock	Percentage of stock potentially affected %	Population trend
Atlantic white-sided dolphin	214	23,390	0.91	N/A
Short-beaked common dolphin	249	120,743	0.21	N/A
Harbor porpoise	21	89,054	0.02	N/A
Minke whale	14	8,987	0.16	N/A

TABLE 6—SPECIES INFORMATION AND TAKE AUTHORIZED BY NMFS—Continued

Common species name	Authorized take	Abundance of stock	Percentage of stock potentially affected %	Population trend
Fin whale	75	3,985	1.88	N/A
Humpback whale	5	11,570	0.04	Increasing
North Atlantic right whale	3	444	0.67	Increasing
Gray seal	107	348,900	0.03	Increasing
Harbor seal	74	99,340	0.07	N/A

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is "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" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

DWBI did not request, and NMFS is not anticipating or authorizing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that take will be in the form of behavioral harassment. Exposure to sound levels above 160 dB during impact pile driving will not last for more than 12 hours per day for 20 non-consecutive days. Exposure to sound levels above 120 dB during use of the DP vessel thruster may last for 24 hours per day for 28 days. While use of the DP thruster may last for consecutive days, the vessel will be moving and therefore not focused on one specific area for the entire duration. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Marine mammal habitat may be impacted by elevated sound levels and sediment disturbance, but these impacts will be temporary. Furthermore, there are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the project area. There is also no designated critical habitat for any ESA-listed marine mammals. The mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before the pile driver reaches full energy; (2) reducing the intensity of exposure within a certain distance by reducing the DP vessel thruster power; and (3) preventing animals from being exposed to sound levels reaching 180 dB during impact pile driving.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from DWBI's BIWF project is not likely to have an effect on annual rates of recruitment or survival of the affected species or stocks. Therefore the take from the project will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The numbers of individual animals that may be exposed to sound levels above 160 dB (impact pile driving) and 120 dB (DP vessel thruster) is small relative to the affected species or stock sizes (Table 6). The authorized take numbers are the maximum numbers of animals that are expected to be harassed during the BIWF project; it is possible that some of these exposures may occur to the same individual. NMFS finds that small numbers of marine mammals will be taken relative to the populations of 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, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are three marine mammal species that are listed as endangered under the ESA: Fin whale, humpback whale, and North Atlantic right whale. Under section 7 of the ESA, the USACE (the federal permitting agency for the actual BIWF construction) consulted with NMFS on the BIWF project. NMFS also consulted internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. NMFS Northeast Region (now known as the Greater Atlantic Region) issued a Biological Opinion on January 30, 2014, concluding that the Block Island Wind Farm project may adversely affect but is not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. The effects of the IHA on listed marine mammal species fall within the scope of effects analyzed in the Biological Opinion for the Block Island Wind Farm project. Therefore, a new consultation is not required for issuance of this IHA. Following the issuance of the IHA, an incidental take statement (ITS), with associated reasonable and prudent measures and terms and conditions, will be issued to exempt any take of listed marine mammal species from the take prohibition in section 9 of the ESA. The ITS will be appended to the January 30, 2014 Biological Opinion.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) analyzing the potential impacts of the issuance of an IHA for the proposed activities. The final EA was prepared in August 2014 and NMFS made a Finding of No Significant Impact for this action.

These documents are available on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Accordingly, an Environmental Impact Statement is not required and none was prepared.

Dated: September 4, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–21417 Filed 9–8–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Reestablishment of the Global Markets Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Global Markets Advisory Committee reestablishment.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this notice to announce the reestablishment of the Global Markets Advisory Committee (GMAC). The Commission has determined that reestablishment of the GMAC is necessary and in the public's interest. No earlier than fifteen (15) days following the date of the publication of this notice, the GMAC Charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat.

ADDRESSES: Written comments should be submitted to the attention of Christopher Kirkpatrick, Secretary of the Commission, either electronically to *secretary@cftc.gov* or by mail to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Please submit your comments using only one method and identify that you are commenting on the GMAC's reestablishment.

FOR FURTHER INFORMATION CONTACT: Ted Serafini, GMAC Designated Federal Officer, at 202–418–5972.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S. C. App. II, the Commission is publishing this notice to announce the reestablishment of the GMAC. The Commission has determined that the reestablishment of the GMAC is necessary and in the public interest. The objectives and scope of activities of the GMAC are to conduct public meetings and to submit reports and recommendations on matters of public concern to the exchanges, firms, market users, and the Commission regarding the regulatory challenges of a global marketplace. The GMAC will help the Commission determine how it can avoid unnecessary regulatory or operational impediments to global business while still preserving core protections for customers and other market participants. The GMAC will also make recommendations for appropriate international standards for regulating futures and derivatives markets, as well as intermediaries. Additionally, the GMAC will assist the Commission in assessing the impact on U.S. markets and firms of the Commission's international efforts and the initiatives of foreign regulators and market authorities. The GMAC will also identify methods to improve both domestic and international regulatory structures while continuing to allow U.S. markets and firms to remain competitive in the global market. The GMAC's objectives and activities will allow the Commission to better promote its mission of protecting market users and the public from abusive practices, and help to foster open, competitive, and financially sound futures and options markets. Meetings of the GMAC are open to the public.

The GMAC will operate for two years from the date of reestablishment unless, before the expiration of that time period, its charter is renewed in accordance with section 14(b)(1) of the FACA, or the Commission directs that the GMAC terminate on an earlier date. A copy of the GMAC reestablishment charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the reestablishment charter will be posted on the Commission's Web site at *www.cftc.gov.*

Issued in Washington, DC, on September 4, 2014, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–21411 Filed 9–8–14; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Reestablishment of the Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Agricultural Advisory Committee reestablishment.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this notice to announce the reestablishment of the Agricultural Advisory Committee (AAC). The Commission has determined that reestablishment of the AAC is necessary and in the public's interest. No earlier than fifteen (15) days following the date of the publication of this notice, the AAC Charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat.

ADDRESSES: Written comments should be submitted to the attention of Christopher Kirkpatrick, Secretary of the Commission, either electronically to *secretary@cftc.gov* or by mail to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Please submit your comments using only one method and identify that you are commenting on the AAC's reestablishment.

FOR FURTHER INFORMATION CONTACT: Christa Lachenmayr, AAC Designated Federal Officer, at 202–418–5252.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S. C. App. II, the Commission is publishing this notice to announce the reestablishment of the AAC. The Commission has determined that the reestablishment of the AAC is necessary and in the public interest. The objectives and scope of activities of the AAC are to conduct public meetings and submit reports and recommendations to assist the Commission in assessing issues affecting agricultural producers, processors, lenders and others interested in or affected by the agricultural commodity, futures, and swaps markets. Meetings of the AAC are open to the public.

The AAC will operate for two years from the date of reestablishment unless, before the expiration of that time period, its charter is renewed in accordance with section 14(b)(1) of the FACA, or the Commission directs that the AAC terminate on an earlier date. A copy of the AAC reestablishment charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee

Management Secretariat. A copy of the reestablishment charter will be posted on the Commission's Web site at *www.cftc.gov.*

Issued in Washington, DC, on September 4, 2014, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–21410 Filed 9–8–14; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2014–0018]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new generic information collection plan titled, "CFPB Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings."

DATES: Written comments are encouraged and must be received on or before October 9, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: CFPB Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings

OMB Control Number: 3170–XXXX.

Type of Review: Request for a new OMB Control Number.

Affected Public: Individuals or Households.

Estimated Number of Annual Respondents: 8,700.

Estimated Total Annual Burden Hours: 11,400.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau is tasked with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. The Bureau seeks to obtain approval for a generic information collection plan to collect data from purposive samples through controlled trials in field and economic laboratory settings. This research will be used for developmental and informative purposes in order to increase the Bureau's understanding of consumer credit markets and household financial decision-making.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on April 14th, 2014, 79 FR 20865. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: August 28, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014–21425 Filed 9–8–14; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: In accordance with 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting at Harmon Hall, U.S. Air Force Academy, Colorado Springs, CO, on September 25–26, 2014. On Thursday, the meeting will begin at 9:30 a.m. The meeting is scheduled to close to the public at 3:30 p.m. On Friday, the meeting will begin at 8:30 a.m. and close at 11:35 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; USAFA Performance Measures Report; USAFA Academics Update; a Religious Respect Briefing; and an Athletic Department Update. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, one session of this meeting shall be closed to the public because it involves matters covered by subsection (c)(6) of 5 U.S.C. 552b. Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if

a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Maj Mark Cipolla, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066, *mark.cipolla@us.af.mil.*

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2014–21398 Filed 9–8–14; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (SEAB) will be renewed for a two-year period beginning on August 29, 2014.

The Committee will provide advice and recommendations to the Secretary of Energy on a range of energy-related issues.

Additionally, the renewal of the SEAB has been determined to be essential to conduct business of the Department of Energy and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer at (202) 586–3787.

Issued at Washington, DC, on August 29, 2014.

Amy Bodette,

Committee Management Officer.

[FR Doc. 2014–21405 Filed 9–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, September 22, 2014; 1 p.m.–4:30 p.m.

Tuesday, September 23, 2014; 8:30 a.m.–5 p.m.

ADDRESSES: Holiday Inn, 2225 Boundary Street, Beaufort, SC 29902.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, Sept. 22, 2014

1 p.m. Combined Committees Session
Order of committees:
- Facilities Disposition & Site Remediation
- Nuclear Materials
- Waste Management
- Administrative & Outreach
- Strategic & Legacy Management

4:15 p.m. Public Comments Session
4:30 p.m. Adjourn

Tuesday, Sept. 23, 2014

8:30 a.m. Opening, Pledge, Approval of Minutes, and Chair Update
9:15 a.m. Welcome from Beaufort Mayor
9:30 a.m. Recommendation & Work Plan Status
9:45 a.m. Agency Updates
10:30 a.m. Public Comments Session
10:45 a.m. Break
11 a.m. Strategic & Legacy Management Report
11:45 a.m. Waste Management Report
12:30 p.m. Public Comments Session
12:45 p.m. Lunch Break
2:15 p.m. Facilities Disposition & Site Remediation Report
4 p.m. Administrative & Outreach Report
4:15 p.m. Nuclear Materials Report
4:45 p.m. Public Comments Session
5 p.m. Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on September 2, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–21404 Filed 9–8–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1194–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) rate filing per 154.204: Junction Project Tariff Filing to be effective 10/1/2014.
Filed Date: 8/21/14.
Accession Number: 20140821–5057.
Comments Due: 5 p.m. ET 9/2/14.

Docket Numbers: RP14–1196–000.
Applicants: Gas Transmission Northwest LLC.
Description: § 4(d) rate filing per 154.204: ROFR Installation of Facilities to be effective 9/22/2014.
Filed Date: 8/22/14.
Accession Number: 20140822–5066.
Comments Due: 5 p.m. ET 9/3/14.

Docket Numbers: RP14–1206–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) rate filing per 154.204: Operational Performance Provisions Filing to be effective 10/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5056.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1207–000.
Applicants: Carolina Gas Transmission Corporation.
Description: Penalty Revenue Sharing Filing of Carolina Gas Transmission Corporation for 2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5066.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1208–000.
Applicants: Equitrans, L.P.
Description: § 4(d) rate filing per 154.204: Reservation Charge Crediting to be effective 10/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5073.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1209–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) rate filing per 154.204: 2014 Winter Fuel Filing to be effective 10/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5088.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1210–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) rate filing per 154.403: GSS LSS SS–2 S–2 2014 TGPL ACA Tracker Filing to be effective 10/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5156.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1211–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: Negotiated Rate Release—eff 9/1/2014 to be effective 9/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5161.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1212–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: Negotiated Rate Release Brooklyn Union—eff 9/1/2014 to be effective 9/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5162.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1213–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: Negotiated Rate Release KeySpan—eff 9/1/2014 to be effective 9/1/2014.
Filed Date: 8/28/14.
Accession Number: 20140828–5176.
Comments Due: 5 p.m. ET 9/9/14.

Docket Numbers: RP14–1214–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) rate filing per 154.312: NGA Section 4 Rate Case to be effective 3/1/2015.
Filed Date: 8/29/14.
Accession Number: 20140829–5003.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1215–000.
Applicants: Paiute Pipeline Company.
Description: § 4(d) rate filing per 154.204: Place Tariff Sheets Into Effect to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5002.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1216–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) rate filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Sep 2014 to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5045.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1217–000.
Applicants: North Baja Pipeline, LLC.
Description: § 4(d) rate filing per 154.204: Implementation of New System Tariff Cleanup to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5048.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1218–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): MarkWest Pioneer—Quarterly FRP Filing to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5052.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1219–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) rate filing per 154.204: 2014 Semi-annual Fuel & Electric Power Reimbursement Adjustment to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5054.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1220–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) rate filing per 154.402: Annual Fuel and Gas Loss Retention Percentage Adjustment Filing to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5056.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1221–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing per 154.203: 2014 Operational Entitlements.
Filed Date: 8/29/14.
Accession Number: 20140829–5058.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1222–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) rate filing per 154.204: Fuel Filing on 8–29–14 to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5066.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1223–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Columbia Gulf Transmission, LLC's Annual Cash-Out Report.
Filed Date: 8/29/14.
Accession Number: 20140829–5068.
Comments Due: 5 p.m. ET 9/10/14.

Docket Numbers: RP14–1224–000.
Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Petrohawk 41455 to BP 42989) to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5076.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1225–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Encana 37663 to Texla 43001) to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5077.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1226–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (JW Operating 34690 to QWest 43003) to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5082.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1227–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): FL&U and EPC Effective October 1, 2014 to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5103.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1228–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Annual Operational Purchase and Sales Report of Colorado Interstate Gas Company, L.L.C.
Filed Date: 8/29/14.
Accession Number: 20140829–5138.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1229–000.
Applicants: Honeoye Storage Corporation.
Description: § 4(d) rate filing per 154.204: Honeoye Storage Corp/NFGDC Changes October 1, 2014 to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5142.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1230–000.
Applicants: Dominion Transmission, Inc.
Description: § 4(d) rate filing per 154.204: DTI—Web site Notification to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5143.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1231–000.
Applicants: Dominion Cove Point LNG, LP.
Description: § 4(d) rate filing per 154.204: DCP—Web site Notification to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5144.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1232–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): Annual FL&U and Index Price Update Effective October 1, 2014 to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5145.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1233–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Negotiated Rate—DTE Energy to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5174.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1234–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Negotiated Rate Filing—Enable Energy to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5176.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1235–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) rate filing per 154.204: Non-Conforming Agreement Filing (CFE) to be effective 10/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5194.
Comments Due: 5 p.m. ET 9/10/14.
Docket Numbers: RP14–1236–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) rate filing per 154.204: Volume No. 2—Statoil Natural Gas LLC—Amend Exhibit A to be effective 9/1/2014.
Filed Date: 8/29/14.
Accession Number: 20140829–5213.
Comments Due: 5 p.m. ET 9/10/14.

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: September 2, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21322 Filed 9–8–14; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

ACTION: Notice of open meeting.

Time and Place: Wednesday, September 17, 2014 from 9:00 a.m.–1:00 p.m. The meeting will be held at the Export-Import Bank in the Main Conference Room—11th floor, 811 Vermont Avenue NW., Washington, DC 20571.

SUMMARY: The Advisory Committee was established November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Agenda: Subcommittee reports and deliberations regarding recommendations to the Bank and informational briefings by Bank staff.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If members of the public wish to attend, they must contact Niki Shepperd by 3 p.m. on September 16, 2014. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, by September 16, 2014, Niki Shepperd. Niki Shepperd can be reached at: 811 Vermont Avenue NW., Washington, DC 20571, at *niki.shepperd@exim.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Niki Shepperd, 811 Vermont Ave. NW., Washington, DC 20571, at *niki.shepperd@exim.gov.*

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2014–21328 Filed 9–8–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority the implementation of the following report:

Report title: Policy Impact Survey.

Agency form number: FR 3075.

OMB control number: 7100–0362.

Frequency: On occasion.

Reporters: Bank holding companies (BHCs) (and their subsidiaries), savings and loan holding companies (SLHCs), non-BHC/SLHC systemically important financial institutions (SIFIs), the combined domestic operations of certain foreign banking organizations (FBOs), state member banks (SMBs), Edge and agreement corporations, and U.S. branches and agencies for foreign banks authorized under specific statutes noted below.

Estimated annual reporting hours: 58,500 hours.

Estimated average hours per response: 60 hours.

Estimated number of respondents: 65.

General description of report: This information collection is generally authorized under sections 2A and 12A of the Federal Reserve Act. Section 2A requires that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee (FOMC) maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates. 12 U.S.C. 225a. In addition, under section 12A of the Federal Reserve Act, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to the regulations' bearing upon the general credit situation of the country. 12 U.S.C. 263. The authority of the Federal Reserve to collect economic data to carry out the requirements of these provisions is implicit. Accordingly, the Federal Reserve is authorized to use the FR 3075 by sections 2A and 12A of the Federal Reserve Act.

Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from: BHCs (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); SLHCs under section 10(b)(2) of the Home Owners Loan Act (12 U.S.C. 1467a(b)(2)); non-BHC/SLHC SIFIs under section 161(a) of the Dodd-Frank Act (12 U.S.C. 5361(a)); the combined domestic operations of certain FBOs under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); SMBs under section 9 of the Federal Reserve Act (12 U.S.C. 324); Edge and agreement corporations under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625) and U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2) and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)).

The Federal Reserve expects the majority of surveys to be conducted on a voluntary basis. However, with respect to collections of information from BHCs (and their subsidiaries), SLHCs, non-BHC/SLHC SIFIs, the combined domestic operations of certain foreign banking organizations, state member banks, Edge and agreement corporations, and U.S. branches and agencies for foreign banks authorized under the specific statutes noted above, the Federal Reserve could make the obligation to respond mandatory.

The ability of the Federal Reserve to maintain the confidentiality of information provided by respondents to the FR 3075 surveys will have to be determined on a case-by-case basis depending on the type of information provided for a particular survey. Depending upon the survey questions, confidential treatment may be warranted under exemptions 4, 6, and 8 of the Freedom of Information Act (FOIA). Exemption 4 protects from disclosure trade secrets and commercial or financial information, while exemption 6 protects information "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. 552(b)(4) and (b)(6). If the survey is mandatory and is undertaken as part of the supervisory process, information could be protected under FOIA exemption 8, which protects information relating to examination reports. 5 U.S.C. 552(b)(8).

Abstract: The FR 3075 collects information from select institutions regulated by the Federal Reserve in order to assess the effects of proposed, pending, or recently-adopted policy changes at the domestic and international levels. For example, the survey collects information used for certain quantitative impact studies (QISs) sponsored by bodies such as the Basel Committee on Banking Supervision and the Financial Stability Board. Recent QISs have included the Basel III monitoring exercise, which monitors the global impact of the Basel III framework,[1] and the global systemically important bank exercise, which assesses a firm's systemic risk profile.[2] Since the collected data may change from survey to survey, there is no fixed reporting form. The data submission timeline for each survey will be determined prior to the distribution of the survey materials. In soliciting participation, the Federal Reserve will explain to respondents the purpose of the survey and how the data will be used. While the number of respondents may fluctuate between

[1] For more information on the Basel III monitoring exercise, see *www.bis.org/bcbs/qis/*.

[2] For more information on the G–SIB exercise, see *www.bis.org/bcbs/gsib/*.

surveys, the survey may be conducted up to 15 times per year.

Current Actions: On June 18, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 34751) requesting public comment for 60 days on the proposal to implement the Policy Impact Survey. The comment period for this notice expired on August 18, 2014. The Federal Reserve did not receive any comments. The FR 3075 survey will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 4, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–21397 Filed 9–8–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 2014.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Douglas L. Jilek B Trust, Sheila K. Jilek, both of Lester Prairie, and Norman C. Arlt,* Aurora, Colorado, individually and as co-trustees of the Douglas L Jilek B Trust; to acquire voting shares of Prairie Bancshares, Inc., and thereby indirectly acquire voting shares of First Community Bank, both in Lester Prairie, Minnesota.

Board of Governors of the Federal Reserve System, September 4, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–21374 Filed 9–8–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14VU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Promoting Adolescent Health through School-Based HIV/STD Prevention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests a 3-year OMB approval to conduct a new information collection entitled, "Promoting Adolescent Health Through School-Based HIV/STD Prevention". The proposed project is a semi-annual Web-based questionnaire to assess programmatic activities among funded agencies which include local education agencies (LEA), state education agencies (SEA), and non-governmental organizations (NGO) funded by the Division of Adolescent and School Health (DASH), Centers for Disease Control and Prevention.

Currently, the questionnaires are the only standardized reporting process for HIV/STD prevention activities among LEAs, SEAs, and NGOs funded by DASH. The data being gathered via the nine questionnaires: (1) Provides standardized information about how HIV/STD prevention funds are used by funded agencies; (2) provides descriptive and process information about program activities; and (3) provides greater accountability for use of public funds. The questionnaires are completed by the funded agencies on a Web site managed by DASH and its contractor, Karna. The questionnaires are to be completed on a semi-annual basis.

The questionnaires pertain to the approaches that funded agencies are using to meet their goals. Approaches include helping districts and schools deliver exemplary sexual health education (ESHE) emphasizing HIV and other STD prevention; increasing adolescent access to key sexual health services (SHS); and establishing safe and supportive environments (SSE) for students and staff.

There are a total of nine questionnaires that are included in the burden table below. Each SEA will be completing activities for all approaches. Therefore, each SEA will complete a questionnaire for each approach (ESHE, SHS, and SSE). Likewise, each LEA will be completing activities for all approaches. Therefore, each LEA will complete a questionnaire for each approach (ESHE, SHS, and SSE). Each NGO will respond to the questionnaire for the approach they are implementing in support of SEAs or LEAs. Two NGOs will respond to the ESHE questionnaire, two NGOs will respond to the SHS questionnaire, and two NGOs will respond to the SSE questionnaire.

There are no costs to respondents other than their time. The estimated annualized burden for all funded agencies is 820 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
State Education Agency	Exemplary Sexual Health Education Measures	19	2	4
	Sexual Health Services Measures	19	2	3
	Safe and Supportive Environments Measures	19	2	1
Local Education Agency	Exemplary Sexual Health Education Measures	17	2	6
	Sexual Health Services Measures	17	2	3
	Safe and Supportive Environments Measures	17	2	6
Non-governmental organization.	Exemplary Sexual Health Education Measures	2	2	30/60
	Sexual Health Services Measures	2	2	30/60
	Safe and Supportive Environments Measures	2	2	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21377 Filed 9–8–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–14AVQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Returning Our Veterans to Employment and Reintegration (ROVER): Work Stress and Assistance Animals—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Veterans with chronic posttraumatic stress disorder (PTSD) face barriers that prevent many of them from successfully reintegrating into society and returning to the work force. Various reports claim that higher unemployment rates and increased healthcare costs and utilization are associated with PTSD.

Symptoms associated with PTSD include diminished interest or participation in significant activities, feelings of detachment or estrangement from others, difficulty falling or staying asleep, hyper vigilance, exaggerated startle response, difficulty with concentration or attention, and a restricted range of affect. Amelioration of PTSD symptoms is necessary to facilitate reintegration of veterans into society and the workforce; these benefits may also contribute positively to veterans' overall physical and psychological health.

A review of mostly anecdotal evidence suggests that animal-assisted interventions may have general therapeutic benefits for individuals with PTSD. Although a few reports tout the benefits of human-animal companionship, no studies have focused specifically on investigating the elements of human-animal interactions that might be therapeutic for individuals with PTSD or other stress-related disorders. Furthermore, there is scant evidence supporting the notion that service dogs or therapy dogs may directly improve functioning and, thereby, ease an individual's reintegration into society and employment.

NIOSH is seeking a 3-year approval from OMB on a research study aimed at understanding the benefits of human-animal interactions for the purpose of facilitating the reintegration and employment of veterans with PTSD. The efficacy of using service dogs or other types of assistance dogs to help veterans with disabilities return to work has not been established in well-controlled scientific studies, and fundamental empirical evidence is scant. As a step toward a greater understanding, a laboratory-based work-simulation study will be conducted to investigate the influence of the presence of and interactions with a dog on the reactivity and performance of veterans with and without PTSD to work-related and startle stressors. Results of the laboratory-based study will complement the findings of another project (OMB No. 09200985), which is gathering information about veterans perceptions

of the barriers and facilitators to reintegration through two national Web-based surveys. There is no duplication of effort or burden because the research objectives and research methods are substantial different.

This study will be conducted at the NIOSH research facility in Morgantown, WV, which includes state-of-the-art laboratories and equipment to simulate work-related stress under controlled conditions and will use a small-n experimental design with multiple, repeated assessments over time to measure the behavioral (work performance), psychological, and physiological responses of participants. The role of dogs in potentially moderating the effects of the stressors will be investigated with either the absence or presence of a dog in some conditions and a dog that is either familiar or unfamiliar to the veteran in other conditions. The general working hypothesis is that the presence of, and/or interaction with, a familiar dog reduces stress and enhances work performance for both veterans with and without PTSD, with a greater benefit to veterans with PTSD.

U.S. Veterans, with and without PTSD, and veterans with service dogs will be recruited with the assistance of various veterans' organizations to participate in this research study. During the initial recruitment phase, veterans who receive and respond to the recruitment announcements will complete several Web-based prescreening questionnaires, and eligible veterans, who are enrolled into the research study, will complete additional questionnaires and tasks in multi-day assessment sessions at the NIOSH Morgantown facility. An estimated 400 persons in various veterans' agencies will receive email announcements of the research study and follow-up phone calls. The work activity associated with reading the email, answering the phone calls, and distributing a study announcement/flyer to additional individuals is estimated to take up to 10 minutes for each occurrence. Approximately 200 veterans are expected to see the recruitment flyers and complete the initial Web-based contact form and several pre-screening forms, including the Pet Attitude Scale, the Combat Exposure Scale, PTSD Checklist, Medication List, Drug Abuse Screening Test, Center for Epidemiological Studies Depression Scale, Short Michigan Alcoholism Screening Tool, and the World Health Organization Quality of Life Index Brief. A total of 64 eligible veterans from this pool are expected to be enrolled in the laboratory portion of the study, including at least 16 veterans who own a service dog. Upon entering the study, all enrolled veterans will complete the Positive and Negative Affect Scale on site, and veterans with service dogs will complete the Big Five Inventory (BFI), the Canine Behavioral Assessment and Research Questionnaire (CBARQ), the Pet Attachment and Life Impact Scale (PALS), Dog Personality Scale (DPQ), and the Social Style-Self and the Social Style-Service Dog questionnaires.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Representatives of veterans organizations.	Veterans Study Announcement Email/Phone Contact.	400	1	10/60	67
Veterans	Recruitment Flyer	200	1	10/60	33
Veterans	Contact Form	64	1	10/60	11
Veterans	Pre-Screening Pet Attitude Scale	64	1	5/60	5
Veterans	Pre-Screening Combat Exposure Scale.	64	1	5/60	5
Veterans	Pre-Screening PTSD Checklist	64	1	5/60	5
Veterans	Pre-Screening Medication List	64	1	5/60	5
Veterans	Pre-Screening Drug Abuse Screening Test.	64	1	5/60	5
Veterans	Pre-Screening Center for Epidemiolo-gical Studies Depression Scale.	64	1	5/60	5
Veterans	Pre-Screening Short Michigan Alcoholism Screening Tool.	64	1	5/60	5
Veterans	Pre-Screening World Health Organization Quality of Life Index Brief.	64	1	10/60	11
Enrolled Veterans without Service Dogs.	Positive and Negative Affect Scale (PANAS).	48	3	2/60	5
Enrolled Veterans with Service Dogs	PANAS	16	6	2/60	3
Enrolled Veterans without Service Dogs.	NASA Task Load Index (NASA TLX)	48	2	2/60	5
Enrolled Veterans with Service Dogs	NASA TLX	16	4	2/60	2
Enrolled Veterans with Service Dogs	Big Five Inventory (BFI)	16	1	10/60	3
Enrolled Veterans with Service Dogs	Canine Behavioral Assessment and Research Questionnaire (CBARQ).	16	1	10/60	3
Enrolled Veterans with Service Dogs	Pet Attachment and Life Impact Scale (PALS).	16	1	10/60	3
Enrolled Veterans with Service Dogs	Dog Personality Scale (DPQ)	16	1	10/60	3
Enrolled Veterans with Service Dogs	Social Style-Self	16	1	10/60	3
Enrolled Veterans with Service Dogs	Social Style-Service Dog	16	1	10/60	3
Total					190

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21379 Filed 9–8–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Georgia Tuberculosis Outbreak Among Homeless

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of award.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the United States Department of Health and Human Services (HHS) announces a notice of award to the Georgia Department of Public Health, Tuberculosis (TB) Program. This award will be in the amount of $419,095.00.

The purpose of this award is to halt the further spread of a drug-resistant strain of tuberculosis associated with multiple homeless shelters in Fulton County, Georgia.

DATES: It is expected the notice of award will begin on or about September 3, 2014. The project period will be for one year.

FOR FURTHER INFORMATION CONTACT: Gail Burns-Grant, Division of Tuberculosis Elimination, Field Services and Evaluation Branch, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–10, Atlanta, GA 30333; phone: 404–639–5344; email: *GAB2@cdc.gov.*

SUPPLEMENTARY INFORMATION: Currently, the state of Georgia is experiencing a public health emergency in Fulton County where there has been extensive transmission of a drug-resistant strain of tuberculosis (TB) associated with multiple homeless shelters in the county. The Georgia Department of Public Health asked CDC to provide emergency funding for the immediate implementation of CDC recommendations provided as a result of a May 2014 outbreak investigation to prevent further transmission of this drug-resistant strain of tuberculosis and to prevent further deaths associated with this outbreak. Project number is CDC–RFA–PS14–1416.

Dated: September 4, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–21455 Filed 9–4–14; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Advisory Committee Renewals; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice entitled "Advisory Committee Renewals" that appeared in the **Federal Register** of August 25, 2014 (79 FR 50658). The document announced the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. The table in the document contained several errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, August 25, 2014, in FR Doc. 2014–20017, on page 50659 the table is corrected to read:

Name of committee	Date of expiration
Advisory Committee for Pharmaceutical Science and Clinical Pharmacology	January 22, 2016.
Gastrointestinal Drugs Advisory Committee	March 3, 2016.
Bone, Reproductive and Urologic Drugs Advisory Committee (formerly Reproductive Health Drugs Advisory Committee)	March 23, 2016.
Arthritis Advisory Committee	April 5, 2016.
Pharmacy Compounding Advisory Committee	April 25, 2016.
Anesthetic and Analgesic Drugs Advisory Committee	May 1, 2016.
Blood Products Advisory Committee	May 13, 2016.
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2016.
Drug Safety and Risk Management Advisory Committee	May 31, 2016.
Science Advisory Board to the National Center for Toxicological Research	June 2, 2016.
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2016.
Psychopharmacologic Drugs Advisory Committee	June 4, 2016.
Transmissible and Spongiform Encephalopathies Advisory Committee	June 9, 2016.
Science Board to the Food and Drug Administration	June 26, 2016.
Allergenic Products Advisory Committee	July 9, 2016.

Dated: September 3, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–21369 Filed 9–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1049]

Exploring the Expansion of Conditional Approval to Appropriate Categories of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is beginning the exploration process described in a stated performance goal in the Animal Drug User Fee Amendments of 2013 (ADUFA III) goals letter. Consistent with the performance goal, the FDA is inviting comments in regard to the Agency exploring the use of statutory changes to expand the use of conditional approval

beyond new animal drugs intended for minor species or for minor uses in major species to additional categories of new animal drugs as appropriate.

DATES: Although you can comment on this document at any time, to ensure that the Agency considers your comment before finalizing work on the exploration process described in this document, submit either electronic or written comments by March 9, 2015.

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: Matthew Lucia, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rm. E444, Rockville, MD 20855, 240–402–0811, *matthew.lucia@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA considers the timely review of the safety and effectiveness of new animal drugs to be central to the Agency's mission to protect and promote the public health. Before 2004, the timeliness and predictability of the new animal drug review program was a concern. The Animal Drug User Fee Act enacted in 2003 (Pub. L. 108–130; hereinafter referred to as "ADUFA I"), authorized FDA to collect user fees for 5 years—fiscal year (FY) 2004 to FY 2008—that were to be dedicated to expediting the review of new animal drug applications according to certain performance goals and to expand and modernize the new animal drug review program. The Agency agreed to meet a comprehensive set of performance goals established to show significant improvement in the timeliness and predictability of the new animal drug review process. The implementation of ADUFA I provided a significant funding increase that enabled FDA to increase the number of staff dedicated to the new animal drug application review process.

In 2008, before ADUFA I expired, Congress passed the Animal Drug User Fee Amendments of 2008 (Pub. L. 110–316; hereinafter referred to as "ADUFA II") which included an extension of ADUFA for an additional 5 years—FY 2009 to FY 2013. ADUFA II performance goals were established based on ADUFA I FY 2008 review timeframes. In addition, FDA provided program enhancements to reduce review cycles and improve communications during reviews.

In 2013, before ADUFA II expired, Congress passed the Animal Drug User Fee Amendments of 2013 (Pub. L. 113–14; hereinafter referred to as ADUFA III), which was signed by the President on June 13, 2013. Like its predecessors, ADUFA III included its own comprehensive set of performance goals. One such goal, as stated in the ADUFA III goals letter, was: "Beginning in early FY 2014, the Agency agrees to explore, in concert with industry, the feasibility of pursuing statutory revisions, consistent with the Agency's mission to protect and promote the public health, that may expand the use of conditional approvals to other appropriate categories of new animal drug applications and develop recommendations by September 30, 2015."

The conditional approval provisions are found in section 571 of the Federal Food, Drug and Cosmetic Act (the FD&C Act). These provisions allow an applicant to market a new animal drug intended for a minor species or a minor use in a major species after the applicant has demonstrated that the drug is safe and can be manufactured according to standards applicable to approval of applications under section 512(b)(1) of the FD&C Act (21 U.S.C. 360b(b)(1)), but before meeting the full requirements for demonstrating effectiveness by providing "substantial evidence" that the drug is effective. Instead, the applicant seeking conditional approval must demonstrate a "reasonable expectation of effectiveness" and has up to 5 years to meet the requirements for demonstrating "substantial evidence" of effectiveness and receive complete approval of an application filed under section 512(b) of the FD&C Act.

Today, FDA is announcing that it is beginning the exploration process described in the ADUFA III goals letter. With this document, FDA is requesting comments in regard to the Agency exploring the use of statutory changes to expand the use of conditional approval to appropriate categories of new animal drugs beyond those intended for use either in minor species or for minor uses in major species. FDA is opening a public docket to receive comments on the issue. In particular, FDA is inviting comments on the following specific questions:

1. Which categories of new animal drugs, if any, beyond those intended for minor species or minor uses in major species, should be considered by FDA for conditional approval in accordance with the current conditional approval process and why?

2. How would expanding conditional approval positively or negatively affect animal health?

FDA will be reviewing the docket and considering comments submitted as it moves forward with this process. The docket will remain open for 180 days following publication of this document in the **Federal Register**.

II. Comments

Interested persons may submit 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: September 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21227 Filed 9–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1050]

Exploring the Feasibility of Pursuing Statutory Revisions and Other Modifications to Existing Procedures and Requirements Related to the Approval of Combination Drug Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is beginning the exploration process described in a stated performance goal in the Animal Drug User Fee Amendments of 2013 (ADUFA III) goals letter. Consistent with the performance goal, FDA is inviting comments in regard to the Agency exploring the use of statutory changes to modify the current requirement that the use of multiple new animal drugs in a combination drug medicated feed be the subject of an approved new animal drug application (NADA). The Agency also is inviting comment on potential changes to procedures and requirements related to the NADA approval process for such

products that can be accomplished under the Agency's existing statutory authority.

DATES: Although you can comment on this document at any time, to ensure that the Agency considers your comment before finalizing work on the exploration process described in this document, submit either electronic or written comments by September 9, 2015.

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: Linda Wilmot, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rm. E442, Rockville, MD 20855, 240–402–0829, *linda.wilmot@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA considers the timely review of the safety and effectiveness of new animal drugs to be central to the Agency's mission to protect and promote the public health. Before 2004, the timeliness and predictability of the new animal drug review program was a concern. The Animal Drug User Fee Act enacted in 2003 (Pub. L. 108–130; hereinafter referred to as ''ADUFA I''), authorized FDA to collect user fees for 5 years—fiscal year (FY) 2004 to FY 2008—that were to be dedicated to expediting the review of new animal drug applications according to certain performance goals and to expand and modernize the new animal drug review program. The Agency agreed to meet a comprehensive set of performance goals established to show significant improvement in the timeliness and predictability of the new animal drug review process. The implementation of ADUFA I provided a significant funding increase that enabled FDA to increase the number of staff dedicated to the new animal drug application review process.

In 2008, before ADUFA I expired, Congress passed the Animal Drug User Fee Amendments of 2008 (Pub. L. 110–316; hereinafter referred to as ''ADUFA II'') which included an extension of ADUFA for an additional 5 years—FY 2009 to FY 2013. ADUFA II performance goals were established based on ADUFA I FY 2008 review timeframes. In addition, FDA provided program enhancements to reduce review cycles and improve communications during reviews.

In 2013, before ADUFA II expired, Congress passed ADUFA III (Pub. L. 113–14), which was signed by the President on June 13, 2013. Like its predecessors, ADUFA III includes its own comprehensive set of performance goals. One such goal, as stated in the ADUFA III goals letter, is: Beginning in early FY 2014, the Agency agrees to explore, in concert with affected parties, the feasibility of pursuing statutory revisions, consistent with the Agency's mission to protect and promote the public health, that may modify the current requirement that the use of multiple new animal drugs in the same medicated feed be subject to an approved application and develop recommendations by September 30, 2016.

Currently the use of multiple new animal drugs in the same medicated feed (i.e., a combination drug medicated feed) requires an approved NADA for each new animal drug in the combination and a separate approved NADA for the combination new animal drug itself (21 U.S.C. 360b(d)(4); 21 CFR 514.4(c)). FDA and members of regulated industry jointly agreed to explore, as part of the performance goals outlined in the ADUFA III goals letter, potential changes to the approval process for the use of a combination drug medicated feed. The intent of this exploration is to consider changes intended to allow combination drug medicated feeds to be made available to the end user in the most efficient manner possible while protecting and promoting the public health.

Today, FDA is announcing that it is beginning the exploration process described in the ADUFA III goals letter. With this document, FDA is requesting public comment on potential statutory changes, consistent with its mission to protect and promote the public health, to modify the current requirements related to feed use combination drugs. In addition, although in the ADUFA III performance goals letter FDA only agreed to explore the feasibility of pursuing statutory changes, the Agency also invites comment on potential changes to procedures and requirements related to the approval process for these products that can be accomplished under the Agency's existing statutory authority.

FDA is opening a public docket to receive comments on the issue. FDA will be reviewing the docket and considering comments submitted as it moves forward with this process. The docket will remain open for 365 days following publication of this document in the **Federal Register**.

II. Comments

Interested persons may submit electronic comments to regarding this document *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: September 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21226 Filed 9–8–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Fogarty International Center Advisory Board (FICAB) was renewed for an additional two-year period on August 31, 2014.

It is determined that the FICAB is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquires may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov*.

Dated: September 3, 2014.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21338 Filed 9–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrative Cancer Biology.

Date: October 22, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 6W030 Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W242, Bethesda, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: September 3, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21339 Filed 9–8–14; 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: Oncology 2—Translational Clinical Integrated Review Group Cancer Biomarkers Study Section.

Date: October 1–2, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: October 6, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: Deborah L Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: October 6, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine Melchior, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: October 6–7, 2014.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, (301) 435–0677, *mannl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: October 6–7, 2014.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846- 93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 3, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21343 Filed 9–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Identification of Gene Variants for Addiction Related Traits by Next-Gen Sequencing in Model Organisms Selectively Bred for Addiction Traits (UH2/UH3).

Date: September 19, 2014.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jagadeesh S. Rao, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301–443–9511, *jrao@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA I/START Small Grant Review (R03).

Date: November 6, 2014.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: September 3, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21342 Filed 9–8–14; 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; Collaborative Applications: Behavioral Genetics and Epidemiology.

Date: October 2, 2014.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave. NW., Washington, DC 20036.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; DGAP: Developmental Genome Anatomy Project.

Date: October 2, 2014.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dermatology and Rheumatology.

Date: October 7–8, 2014.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development and Application of PET and SPECT Imaging Ligands as Biomarkers for Drug Discovery and for Pathophysiological Studies of CNS Disorders.

Date: October 7, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 3, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21344 Filed 9–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following 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/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis; Training Grant Applications Review.

Date: September 29, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant proposals.

Place: NIAAA, 5635 Fishers Lane; Room 2109, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, (301) 443–8599, *rippera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 92.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Supports Awards, National Institutes of Health, HHS).

Dated: September 3, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21341 Filed 9–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: October 9, 2014.

Open: 8:30 a.m. to 2:00 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute Programs.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Anne E Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, (301) 451–2020.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS).

Dated: September 3, 2014.

Melanie J. Gray-Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21340 Filed 9–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0041]

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension without change of a currently approved collection, 1601–0014.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 10, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0041, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: dhs.pra@hq.dhs.gov* Please include docket number DHS–2014–0041 in the subject line of the message.

SUPPLEMENTARY INFORMATION: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient,

timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: The Department of Homeland Security.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1601–0014.

Frequency: One per Request.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Number of Respondents: 500,000.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 83,350 hours.

Dated: August 18, 2014.

Margaret H. Graves,

Deputy Chief Information Officer.

[FR Doc. 2014–21337 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of Federal Register.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service, Senior Level and Senior Professional positions of the Department.

DATES: *Effective Dates:* This Notice is effective September 9, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357–8164.

SUPPLEMENTARY INFORMATION: Each federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Acton, John
Alles, Randolph D.
Allison, Roderick J.
Amparo, Alexis
Anderson, Penny
Anderson, Rose J.
Andrews, John
Armstrong, Charles R.
Armstrong, Sue
Auletta, Laura
Baer, Thomas
Baran, Kathy
Barber, Delores
Baroukh, Nader
Barrett, Lawrence
Barrows, Angela
Bathurst, Donald
Batkin, Joshua
Bauhs, Kimberlyn
Beagles, James
Beckham, Steward D.
Beers, Rand
Berger, Katrina W.
Bersin, Alan
Bester, Margot
Bibo, David R.
Blume, Mark
Bobich, Jeffrey
Borkowski, Mark S.
Boshears, Kevin
Boyce, Carla J.
Braccio, Dominick D.
Bradsher, Tanya
Brandon, Andrea
Brasure, Lloyd
Breor, Scott
Brinsfield, Kathryn
Brooks, Vicki
Brothers, L. Reginald
Brown, Dallas
Brown, Meddie
Brown, Michael
Brundage, William
Brzymialkiewicz, Caryl
Burriesci, Kelli
Button, Christopher
Caggiano, Marshall L.
Cahill, Donna L.
Caine, Jeffrey
Callahan, Colleen B.
Callahan, David R. RADM
Cameron, Michael K.
Campagnolo, Donna
Canevari, Holly

Cantor, Jonathan
Carpenter, Dea D.
Carraway, Melvin J.
Carter, Gary
Castro, Raul
Chaleki, Thomas
Chavez, Richard
Choi, Juliet
Cioppa, Thomas
Clark, Kenneth
Clever, Daniel
Cline, Richard
Coffman, Katherine M.
Cohn, Alan
Coleman, Corey J.
Colucci, Nicholas
Conklin, Jeffery
Conklin, William
Connolly, John G.
Connor, Edward L.
Correa, Soraya
Coven, Phyllis
Cowan, Robert
Cox, Adam
Crumpacker, Jim
Cummiskey, Chris
Daitch, William
Darling, Michael
Dayton, Mark
de Vallance, Brian
DiFalco, Frank
DiNucci, Richard F.
Dipippa, Kathy L.
Dolan, Mark E.
Dorko, Jeffrey J.
Dorochoff, Ruth
Driggers, Richard
Duong, Anh
Durkovich, Caitlin
Edge, Peter T
Edwards, Eric L.
Eisensmith, Jeffrey
Emerson, Catherine
Emrich, Matthew
Ennis, Eileen
Epstein, Gerald
Erevia, Victor
Essid, Michael
Etzel, Jean
Evetts, Mark
Fagerholm, Eric N.
Falk, Scott K.
Farley, Evan T.
Farmer, Robert A.
Fenton, Robert J.
Fisher, Michael J.
Fitzgerald, Karen
Flynn, William
Fonash, Peter
Fox, Katherine B.
Fox, Kathleen M.
Frazier, Denise
Freeman, Beth A.
Frey, Gregory
Fujimura, Paul N.
Fulghum, Charles
Gabbrielli, Tina
Gaines, Glenn A.
Gammon, Carla
Gantt, Kenneth
Garner, David
Geiselman, Sandra
Gerstein, Daniel
Gersten, David
Gibson, Kathleen M.B.
Goode, Brendan
Gowadia, Huban
Gramlick, Carl
Grant, David
Graves, Margaret
Greene, Jonath
Griffin, Robert
Grimm, Michael
Gruber, Corey D.
Gunter, Brett A.
Hall, Christopher J.
Hardiman, Tara
Havranek, John F.
Hazuda, Mark
Heller, Susan J.
Henderson, Latetia M.
Hess, David
Hewitt, Ronald
Higgins, Jennifer
Highsmith, AnnMarie
Hill, Alice
Hill, Marcus L.
Hill, Mark
Hinojosa, Ana B.
Hochman, Kathleen
Hoggan, Kelly C.
Holtermann, Keith
Homan, Thomas
Hoy, Serena
Hutchison, Steven
Hylton, Roberto L.
Ileto, Carlene
Ingram, Deborah
Jaddou, Ur M.
Jensen, Robert
Johnson Perryman, Janet
Johnson, Daniel
Johnson, Edward H.
Johnson, James
Johnson, Jeh
Jones Jr., Berl D.
Jones, Franklin C.
Jones, Keith
Jones, Rendell L.
Kamoie, Brian
Kaufman, David J.
Keene, Delma K.
Keene, Kenneth D.
Kendall, Sarah
Kerner, Francine
Kessler, Tamara
Kielsmeier, Lauren
Kieserman, Brad J.
Kish, James R.
Kopel, Richard
Koumans, Marnix
Kramar, John
Krizay, Glenn
Kronisch, Matthew L.
Kruger, Mary
Kruger, Randy
Kubiak, Lev J.
Lafferty, John
Lajoye, Darby R.
Langlois, Joseph
Lederer, Calvin M.
Lew, Kimberly
Logan, Christopher
Looney, Robert
Ludtke, Meghan G.
Lumpkins, Donald M.
Lyon, Shonnie
Mabeus, Steven
Mack, Megan
Magaw, Craig D.
Maher, Joseph B.
Manaher, Colleen M.
Mapar, Jalal
Marchio, Gregory A.
Marcott, Stacey
Marrone, Christian
Marshall, Gregory
Martoccia, Anthony R.
Maughan, William
May, Major P.
Mayorkas, Alejandro
McAleenan, Kevin K.
McAllister, Scott
McClain, Ellen
McCormack, Luke
McDonald, Christina E.
McMillan, Howard
McNamara, Philip
McPeek, Steven
Meckley, Tammy
Melero, Mariela
Menna , Jenny
Metzler, Alan
Meyer, Jonathan E.
Micone, Vincent
Miles, John
Miller, David L.
Mitchell, Andrew
Mocny, Robert
Monica, Donald
Montoya, Elisa
Moore, Joseph
Morrissey, Paul S.
Moses, Patrick
Moynihan, Timothy M.
Mulligan, Ricci
Murphy, Jane P.
Murphy, Kenneth D.
Muzyka, Carolyn
Myers, David L.
Myers, Raymond
Neufeld, Donald W.
Neuman, Karen
Nimmich, Joseph L.
Novak, Michael, R.
Odom, Maria
Okada, Ted T.
Olavarria, Esther
Oliver, Clifford E.
Onieal, Denis G.
Orner, Jeffery
Ozben, Esra
Ozment, James
Palmer, David J.
Paramore, Faron K.
Paschall, Robert
Patel, Nimesh
Patrick, Connie L.
Patterson, Leonard
Pelowski, Gregg
Penn, Damon C.
Phillips, Sally
Pierson, Julia A.
Pietropaoli, Lori
Pino, Lisa
Pohlman, Teresa
Potts, Michael
Pupillo, Dale A.
Ramanathan, Sue
Ramlogan, Riah
Redman, Kathy
Reeder, Victoria A.
Renaud, Daniel
Renaud, Tracy
Reuther, Kurt
Rhew, Perry
Richardson, Gregory
Riordan, Denis

Robbins, Timothy
Robinson, David M.
Robinson, George
Robinson, Kristin
Roche, William W.
Rodriguez, Leon
Rogers, Debra
Rosen, Paul
Rosenberg, Ron
Roy, Donna
Ruppel, Joanna
Russell, Anthony A.
Russell, Michael
Ryan, Paul
Rynes, Joel
Salazar, Ronald
Saunders, Steve D.
Savastana, Anthony J.
Scanlon, Julie A.
Schied, Eugene H.
Schmelzinger, Gilbert
Schneck, Phyllis
Schreiber, Tonya
Schwartz, Mark
Scialabba, Lori
Seale, Mary
Sekar, Radha C.
Selby, Cara
Sevier, Adrian
Shahoulian, David
Shelton Waters, Karen R.
Short, Victoria
Silvers, Robert
Singleton, Kathy
Smiley, Dennis
Smislova, Melissa
Smith, A.T.
Smith, Bradley W.
Smith, Thomas
Snellings, Sharon C.
Snow, Avie
Solheim, Linda
Spaulding, Suzanne
Stader, James
Stallworth, Charles E.
Stanley, Kathleen
Stanton, John
Stempfley, Roberta
Stewart, Sharon
Strack, Barbara
Streufert, John
Sulc, Brian
Sutherland, Daniel
Swacina, Linda
Swain, Donald
Swartz, Neal J.
Swengros, Richard
Taylor, Charles
Taylor, Francis
Teets, Gregory L.
Tennyson, Stephanie L.
Thomas, Rob C.
Thompson, John
Thoreen, William
Tierney, MaryAnn E.
Toler, Jacob
Torrence, Donald
Touhill, Gregory
Tuttle, James
Ulianko, John
Vanison, Denise
Veitch, Alexandra
Velarde, Barbara
Velasquez III, Andrew
Venture, Veronica
Vincent, Peter S.
Wagner, John P.
Walton, Kimberly H.
Warrick, Thomas
Watson, Daniel M.
Wenchel, Rosemary
White, Willie
Williams, Dwight M.
Williams, Gerard J.
Williams, Richard
Windham, Nicole
Wisniewski, Leo
Wright, Roy E.
Wulf, David
Zabko, John
Zelvin, Lawrence
Zimmerman, Elizabeth A.
Zuchowski, Laura

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: August 28, 2014.

Shonna R. James,

Manager, Executive Resources Policy, Office of the Chief Human Capital Officer.

[FR Doc. 2014–21336 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below, that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves requesting, name, contact information, airline employee number, and Social Security number (last four digits) from flight and cabin crew members of air carriers to verify employment status to confirm eligibility to participate in voluntary advanced self-defense training provided by TSA. Eligible training participants are flight and cabin crew members of an airline conducting scheduled passenger operations. Additionally, each participant is asked to complete a voluntary course evaluation form after the training concludes.

DATES: Send your comments by November 10, 2014.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S. C. 3501 et se.), 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. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking to renew the ICR, currently approved under OMB number 1652–0028, to continue compliance with a statutory mandate. Under 49 U.S. C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

This renewal is necessary so that TSA may continue to provide the program to

eligible participants as well as assess training quality. TSA must collect limited biographical information from flight and cabin crew members to confirm their eligibility to participate in this training, consisting of the participant's name, contact information, airline employee number, and the last four digits of his or her Social Security number. TSA then confirms the eligibility of the participant by contacting the participant's employer. TSA also asks participants to complete an anonymous and voluntary evaluation form after participation in the training to assess the quality of the training.

The estimated number of annual respondents is 1,000 and estimated annual burden is 250 hours. TSA plans to graduate at least 1,000 crew members during each year of the program. Each crew member completes a registration form either on-line or via telephone. At the end of the course, each participant is asked to complete the voluntary TSA Level-1 Evaluation Form. Altogether this will amount to approximately 2,000 total responses.

TSA estimates, at most, the registration process will require 5 minutes per crew member. This would amount to 1,000 crew members times 5 minutes equals 5,000 minutes or 83.3 hours (1,000 members × 5 min = 5,000 min [83.3 hrs]). TSA estimates approximately 10 minutes per crew member to complete the TSA Level 1 Evaluation Form, for a total of 10,000 minutes or 166.7 hours for all 1,000 crew members (1,000 members × 10 min = 10,000 min [166.7 hrs]). TSA therefore estimates the total annual hours requested to be 250 hours (83.3+166.7 = 250 hrs). There is no estimated annual cost burden to respondents.

Dated: September 4, 2014.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2014–21409 Filed 9–8–14; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–R1–FHC–2014–N189; FRFR48370811630–XXX–FF08FSTF00]

Proposed Information Collection; Fish Monitoring Survey—Central Valley, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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: To ensure that we are able to consider your comments on this IC, we must receive them by November 10, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include "1018—Fish Monitoring Survey" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

We will conduct the survey using an online questionnaire. The objectives of the survey are to:

- Obtain expert opinions on the prioritization of fish monitoring and research within the San Francisco Estuary and its watershed;
- Explain the levels of scientific understanding or uncertainty associated with the ecology and viability of high-priority fish taxa; and
- Identify the environmental drivers that influence fish populations.

We will use the information to inform structured decision making models developed by the Stockton Fish and Wildlife Office's Delta Juvenile Fish Monitoring Program in Lodi, California. The structured decision making models will be used to adaptively evaluate the management utility of existing and alternative monitoring objectives and associated fish sampling elements within the San Francisco Estuary and its watershed.

II. Data

OMB Control Number: 1018—New.

Title: Fish Monitoring Questionnaire—Central Valley, CA.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Representatives of six Federal agencies (U.S. Bureau of Reclamation, U.S. Geological Survey, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency), four State of California agencies (California Department of Water Resources, California Department of Fish and Wildlife, Delta Stewardship Council, and State Water Resources Control Board), and all universities and nongovernmental organizations (San Francisco Estuary Institute) that manage and/or research fish or their habitat within the San Francisco Estuary and its watershed.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Respondents: 100 (non-Federal respondents).

Estimated Completion Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 100.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 3, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21353 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2013–N238; FXRS1265030000–145–FF03R06000]

Big Muddy National Fish and Wildlife Refuge; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Big Muddy National Fish and Wildlife Refuge, which is authorized within the 20 counties that lie along the Missouri River from Kansas City to St. Louis, Missouri. In this final CCP, we describe how we intend to manage the refuge for the next 15 years.

ADDRESSES: You will find the final CCP and the EA/FONSI on the planning Web site at *www.fws.gov/midwest/planning/bigmuddyccp/*. A limited number of hard copies and compact discs are available. You may request one by any of the following methods:

- *Email: r3planning@fws.gov.* Include "Big Muddy Refuge—Final CCP" in the subject line of the message.
- *U.S. Mail:* Conservation Planning, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437.

FOR FURTHER INFORMATION CONTACT: Thomas Larson, 612–713–5430.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Big Muddy National Fish and Wildlife Refuge. We began the CCP process for Big Muddy Refuge by publishing a notice of intent in the **Federal Register** (72 FR 27587) on May 16, 2007. For more about the initial process and the history of the refuge, see that notice.

We released the EA and draft CCP to the public, announcing and requesting comments in a notice of availability (78 FR 60306) on October 1, 2013. The 30-day comment period was to end October 31, 2013, but was extended for an additional 3 weeks, ending on November 20, 2013, due to the Federal government shutdown that occurred from October 1 to 16. A summary of public comments and the agency responses is included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP may be found at *www.fws.gov/midwest/planning/bigmuddyccp/*. The final CCP includes detailed information about the planning process, the refuge, issues, and management alternative selected. The Web site also includes an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.). The EA/FONSI includes discussion of three alternative refuge management options. The Service's selected alternative is reflected in the final CCP. The selected alternative delineates and includes management direction for three urban and two rural river reaches. Within all existing and future refuge units, the alternative calls for restoring hydrology, reconnecting the Missouri River and tributaries to their floodplains, returning or maintaining natural cover types, and providing a specified standard level of visitor services. This alternative also emphasizes biological inventory and monitoring and additional visitor services and facilities within two of the five river reaches. One reach centered on Columbia, Missouri, receives the greatest emphasis. A detailed description of objectives and actions included in this selected alternative is found in chapter 4 of the final CCP.

Dated: February 11, 2014.

Thomas O. Melius,

Regional Director.

Editorial Note: This document was received for publication by the Office of Federal Register on September 4, 2014.

[FR Doc. 2014–21420 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2014–N116; FXRS12610600000–145–FF06R06000]

National Elk Refuge, Jackson, WY; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that our draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the National Elk Refuge is available. This draft CCP describes how the Service intends to manage this refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments on the draft CCP/EA by October 9, 2014. Submit comments by one of the methods under **ADDRESSES**.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: refuge_ccps@fws.gov. Include "National Elk Refuge CCP" in the subject line of the message.

U.S. Mail: Toni Griffin, Planning Team Leader, Suite 300, 134 Union Boulevard, Lakewood, CO 80228.

Document Request: A copy of the CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, CO 80228; or by download from *http://*

www.fws.gov/mountain-prairie/planning/ccp/wy/ner/ner.html.

FOR FURTHER INFORMATION CONTACT: Toni Griffin, 303–236–4378 (phone); or *toni_griffin@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the National Elk Refuge. We started this process through a notice in the **Federal Register** (75 FR 65370, October 22, 2010). The National Elk Refuge was established in 1912 as a "winter game (elk) reserve" (37 Stat. 293, 16 U.S.C. 673), and the following year Congress designated the area as "a winter elk refuge" (37 Stat. 847). In 1921, all lands included in the refuge, or that might be added in the future, were reserved and set apart as "refuges and breeding grounds for birds" [Executive Order (EO) 3596, which was affirmed in 1922 (EO 3741)]. In 1927 the refuge was expanded to provide "for the grazing of, and as a refuge for, American elk and other big game animals" (44 Stat. 1246, 16 U.S.C. 673a). These purposes apply to all or most of the lands now within the refuge. Several parcels have been added to the refuge specifically for the conservation of fish and wildlife (Fish and Wildlife Act of 1956), the development of wildlife-oriented recreational opportunities (Refuge Recreation Act of 1962, 16 U.S.C. 460k–l), the protection of natural resources, and the conservation of threatened and endangered species (Endangered Species Act of 1973; 16 U.S.C. 1531 *et seq.*).

The refuge is located in Teton County, Wyoming. A wide variety of habitats are found on the National Elk Refuge, including grassy meadows, marshes, timbered areas, sagebrush, and rocky outcroppings. Between November and May, the wildlife concentrations and diversity provide spectacular wildlife viewing opportunities. The refuge's nearly 25,000 acres provide a winter home for one of the largest wintering concentrations of elk. In addition to the large elk herds, a free roaming bison herd winters at the refuge. A variety of waterfowl, including trumpeter swans, can be seen on nearly 1,600 acres of open water and marshlands. At least 47 mammal species and nearly 175 species of birds have been observed on the refuge. Some notable species include moose, bighorn sheep, pronghorn, gray wolves, mountain lions, bald eagles, and peregrine falcons.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Public Outreach

We started the CCP process for the National Elk Refuge in October 2010. Throughout the process, we have requested public comments and considered and incorporated them in the planning process. Public outreach has included a news release, planning update, and a scoping meeting. Comments we received cover topics such as habitat management, threatened and endangered species, and public use. We have considered and evaluated all of these comments, with many incorporated into the various alternatives addressed in the draft CCP and the EA.

CCP Alternatives We Are Considering

Alternative A—Current Management (No Action)

This no-action alternative represents the current management of the refuge. This alternative provides the baseline against which to compare the other alternatives. Programs would follow the same direction, emphasis, and intensity as they do now. The refuge would not expand current habitat and wildlife practices that benefit bison, elk, migratory birds, or other wildlife. Public use opportunities would remain at current levels.

Alternative B

An important aspect of this alternative would be to increase opportunities for wildlife-dependent public uses such as hunting, fishing, wildlife observation, photography, environmental education, and interpretation programs. This alternative would allow for the most public use as compared to the other alternatives. The other emphasis of this alternative would be to meet habitat and wildlife population objectives through intensive management actions. Because of increased public opportunities, refuge staff would focus more on intensive refuge-specific monitoring, rather than ecosystem monitoring, to gauge the effects of public use on habitat and wildlife.

Alternative C

This alternative would focus on preserving the Great Yellowstone Ecosystem and supporting natural processes. We would strive to preserve intact plant communities, maintain long-distance ungulate migrations, and maintain a full suite of large native carnivores. Public use would emphasize interpretation, environmental education and outreach which may occur off-refuge through community programs and classroom settings, along with the publication and distribution of printed and electronic materials, over recreational opportunities that are direct experiences on the refuge. Tools such as webcams may be installed to provide offsite wildlife viewing opportunities.

Alternative D—Proposed Action

Our proposed action is a blended alternative which incorporates a combination of elements from alternative B and alternative C. Habitat and wildlife management would allow for natural processes to promote natural habitats. Some habitats, such as wetlands, would be intensively managed to enhance swan habitat and improve forage quantity and quality for elk and bison. Similar to alternative B, the refuge would increase opportunities for wildlife-dependent public uses such as hunting, fishing, wildlife observation and photography, and environmental education. Keeping some areas undeveloped and returning some areas to a natural state, we would increase development in other areas to enhance visitor services.

Public Meetings

Opportunity for public input will be provided at a public meeting. The specific date and time for the public meeting is yet to be determined, but will be announced via local media and a planning update.

Next Steps

After the public reviews and provides comments on the draft CCP and EA, the planning team will present this document along with a summary of all substantive public comments to the Regional Director. The Regional Director will consider the environmental effects of each alternative, along with information gathered during public review, and will select a preferred alternative for the draft CCP and EA. If the Regional Director finds that no significant impacts would occur, the Regional Director's decision will be disclosed in a Finding of No Significant Impact. If the Regional Director finds a significant impact would occur, an environmental impact statement will be prepared. If approved, the action in the preferred alternative will compose the final CCP.

Public Availability of Comments

All public comment information provided voluntarily by mail, by phone, or at public meetings (e.g., names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

Authority

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508, 43 CFR part 46); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: August 5, 2014.

Matt Hogan,

Acting, Regional Director, Mountain Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21415 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14EE000101100]

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on September 23–24, 2014 at the National Conservation Training Center, 698 Conservation Way, Shepherdstown, WV 25443. The meeting will be held in Room #201 Instructional East. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Leadership Dialogue
—Recent FGDC Activities
—NSDI Strategic Plan
—Geospatial Platform
—NGAC Subcommittee Activities
—National Information Exchange Model
—Emerging Geospatial Issues

The meeting will include an opportunity for public comment during the morning of September 24. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance for clearance into the meeting site. Please register by contacting Lucia Foulkes at the Federal Geographic Data Committee (703–648–4142, *lfoulkes@usgs.gov*). Registrations are due by September 17. While the meeting will be open to the public, registration is required for entrance to the facility, and seating may be limited due to room capacity.

DATES: The meeting will be held on September 23 from 8:30 a.m. to 5:00 p.m. and on September 24 from 8:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *www.fgdc.gov/ngac.*

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2014–21367 Filed 9–8–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000–L14100000.PP0000–LXSIARAC0000]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Alaska State Office, Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held September 29 & 30, 2014 at the Office of Aviation Services located at 4405 Lear Court, Anchorage, Alaska 99502–1032. The meeting starts at 9:30 a.m. each day in training room #109. The council will accept comments from the public on Monday, September 29 from 3:00–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thom Jennings, RAC Coordinator, BLM-Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone 907–271–3335 or email *tjenning@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Update on proposed development in the National Petroleum Reserve in Alaska (NPR–A)
- Introduction to the scope and charter of the NPR–A Working Group

- Appointment of a RAC subcommittee to meet with the NPR–A Working Group on development within the NPR–A
- Other topics of interest to the RAC

All meetings are open to the public. During the public comment period, depending on the number of people wishing to comment and time available, time for individual oral comments may be limited. Please be prepared to submit written comments if necessary. 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: September 3, 2014.

Ted A. Murphy,

Associate State Director.

[FR Doc. 2014–21435 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–14–L13100000–FI0000–P; NDM 96877]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 96877, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, Hess Bakken Investments II, LLC timely filed a petition for reinstatement of competitive oil and gas lease NDM 96877, Dunn County, North Dakota. The lessee paid the required rentals accruing from the date of termination. No leases were issued that affect these lands.

FOR FURTHER INFORMATION CONTACT: Mary A. Mack, Acting Chief, Fluids Adjudication Section, Bureau of Land Management (BLM) Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669, telephone: 406–896–5090, email: *mmack@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Ms. Mack during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Ms. Mack. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agrees to new lease terms for rentals and royalties of $10 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessee agrees to additional or amended stipulations. The lessee paid the $500 administration fee for the reinstatement of the lease and the $159 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease under Section 31(d) and (e) of the Mineral Leasing Act of 1920. The BLM is proposing to reinstate the lease, effective the date of termination, subject to the:

- Original terms and conditions of the lease;
- Additional and amended stipulations;
- Increased rental of $10 per acre;
- Increased royalty of 16⅔ percent; and
- $159 cost of publishing this Notice.

Mary A. Mack,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 2014–21434 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–14–L13100000–FI0000–P; NDM93267]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 93267, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, Hess Corporation timely filed a petition for reinstatement of noncompetitive oil and gas lease NDM 93267, Mountrail County, North Dakota. The lessee paid the required rentals accruing from the date of termination. No leases were issued that affect these lands.

FOR FURTHER INFORMATION CONTACT: Mary A. Mack, Acting Chief, Fluids Adjudication Section, Bureau of Land Management (BLM) Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669, telephone: 406–896–5090, email: *mmack@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Ms. Mack during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Ms. Mack. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agrees to new lease terms for rentals and royalties of $5 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessee agrees to additional or amended stipulations. The lessee paid the $500 administration fee for the reinstatement of the lease and the $159 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease under Section 31(d) and (e) of the Mineral Leasing Act of 1920. The BLM is proposing to reinstate the lease, effective the date of termination, subject to the:

- Original terms and conditions of the lease;
- Additional and amended stipulations;
- Increased rental of $5 per acre;
- Increased royalty of 16–2/3 percent; and
- $159 cost of publishing this Notice.

Mary A. Mack,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 2014–21432 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on October 9, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 13 South, Range 78 West, Sixth Principal Meridian, Colorado, were accepted on August 14, 2014.

The field notes of the remonumentation of a mineral corner in Township 7 South, Range 70 West, Sixth Meridian, Colorado, were accepted on August 20, 2014.

The plat and field notes of the dependent resurvey and survey in Fractional Township 51 North, Range 14 West, New Mexico Principal Meridian, Colorado, were accepted on August 26, 2014.

The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Townships 12 South, Ranges 67 and 68 West, Sixth Principal Meridian, Colorado, were accepted on August 26, 2014.

The supplemental plat of section 24 in Township 12 South, Range 68 West, Sixth Principal Meridian, Colorado, was accepted on August 27, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–21423 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the survey plat listed below. The plat will be available for viewing at *http://www.glorecords.blm.gov.*

DATES: The plat described in this notice was filed on August 28, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The supplemental plat of the NE1/4 section 16 in Township 11 South, Range 96 West, Sixth Principal Meridian, Colorado, was accepted and filed on August 28, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–21429 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–14–L13100000–PP0000]

Filing of Plats of Survey, Wyoming and Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the supplementals and plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys and supplementals were executed at the request of the Bureau of Land Management and the Bureau of Indian Affairs and are necessary for the management of these lands. The lands referenced are:

The plat and field notes representing the dependent resurvey of the Eighth Standard Parallel North, through Range 110 West, the west boundary, portions of the north boundary and subdivisional lines, and the subdivision of certain sections, Township 33 North, Range 110 West, Sixth Principal Meridian, Wyoming, Group No. 758, was accepted August 28, 2014.

The supplemental plat removing those riparian tracts created by survey of riparian lands, shown on the plat accepted August 21, 1987, that were determined through litigation to be non-federally owned, and removes the extension survey of omitted lands lying between the original meanders, canceled March 2, 2000, File 9600 (957). This plat is based upon the plats accepted August 16, 1894, February 14, 1908, November 3, 1919, December 16, 1963, August 21, 1987, November 22, 1996 and September 28, 2001, Township 40 North, Range 116 West, Sixth Principal Meridian, Wyoming, Group No. 870, was accepted August 28, 2014.

The supplemental plat removing those riparian tracts created by survey of riparian lands, shown on the plat accepted August 21, 1987, that were determined through litigation to be non-federally owned, and removes the extension survey of omitted lands lying between the original meanders, canceled March 2, 2000, File 9600 (957). This plat is based upon the plats accepted April 2, 1903, December 16, 1963, February 18, 1966, March 17, 1971, August 21, 1987 and September 28, 2001, Township 40 North, Range 117 West, Sixth Principal Meridian, Wyoming, Group No. 870, was accepted August 28, 2014.

The supplemental plat removing those riparian tracts created by survey of riparian lands, shown on the plat accepted August 21, 1987, that were determined through litigation to be non-federally owned, and removes the extension survey of omitted lands lying between the original meanders, canceled March 2, 2000, File 9600 (957). This plat is based upon the plats accepted June 30, 1893, February 26, 1970, November 9, 1973 and September 28, 2001, Township 41 North, Range 116 West, Sixth Principal Meridian, Wyoming, Group No. 870, was accepted August 28, 2014.

The supplemental plat removing those riparian tracts created by survey of riparian lands, shown on the plat accepted August 21, 1987, that were determined through litigation to be non-federally owned, and removes the extension survey of omitted lands lying between the original meanders, canceled March 2, 2000, File 9600 (957). This plat is based upon the plats accepted February 26, 1970, September 28, 2001, January 13, 2010, March 29, 2010, July 27, 2010 and November 3, 2011, Township 41 North, Range 117

West, Sixth Principal Meridian, Wyoming, Group No. 870, was accepted August 28, 2014.

The supplemental plat in two sheets removing those riparian tracts created by survey of riparian lands, shown on the plat accepted August 21, 1987, that were determined through litigation to be non-federally owned, and removes the extension survey of omitted lands lying between the original meanders, canceled March 2, 2000, File 9600 (957). This plat is based upon the plats accepted August 16, 1894, March 17, 1971, November 9, 1973 and August 21, 1987, Township 42 North, Range 116 West, Sixth Principal Meridian, Wyoming, Group No. 870, was accepted August 28, 2014.

The plat and field notes representing the dependent resurvey of portions of the First Guide Meridian East, through T. 24 N., between Rs. 8 and 9 E., the Sixth Standard Parallel North, through R. 8 E., the subdivisional lines, and the subdivision of sections 3 and 29, Township 24 North, Range 8 East, Sixth Principal Meridian, Nebraska, Group No. 179, was accepted August 28, 2014.

The plat and field notes representing the dependent resurvey of portions of the south boundary, the sudivisional lines, and the subdivision of section 34, and the survey of the subdivision of section 34, Township 26 North, Range 6 East, Sixth Principal Meridian, Nebraska, Group No. 180, was accepted August 28, 2014.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: September 2, 2014.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2014–21433 Filed 9–8–14; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–929]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Institution of Investigation Under Section 337 of the Tariff Act

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 4, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Adrian Rivera of Whittier, California and ARM Enterprises, Inc. of Santa Fe Springs, California. An amended complaint was filed on August 14, 2014. A supplement was filed on August 22, 2014. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,720,320 ("the '320 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

SUPPLEMENTARY INFORMATION:

Scope of investigation: Having considered the amended complaint, the U.S. International Trade Commission, on September 3, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain beverage brewing capsules, components thereof, and products containing the same by reason of infringement of one or more of claims 5–8 and 18–20 of the '320 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Adrian Rivera, 14979 Lodosa Drive, Whittier, CA 90605.

Adrian Rivera Maynez Enterprises, Inc., 9737 Bell Ranch Drive, Santa Fe Springs, CA 90670.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Solofill LLC, 3515 Avignon Court, Houston, TX 77802.

DonGuan Hai Rui Precision Mould Co., Ltd., No. 1 Chuangxing Road, DaNig Industry, HuMen Town, Dong Guan City, GuangDong Province, China 523000.

Eko Brands, LLC, 6029 238th Street SE., Suite 130, Woodinville, WA 98072.

Evermuch Technology Co., Ltd., Room 515–516, 5/F, Technology Park, 18, On Lai Street, Shatin, New Territories, Hong Kong.

Ever Much Company Ltd., East No. 1, Pak Shek Ha Village, Fu Yong, BaoAn, Shenzhen, China 5181000.

Melitta USA, Inc., 13925 58th Street, North Clearwater, FL 33760–3712.

LBP Mfg. Inc., 1325 S. Cicero Avenue, Cicero, IL 60804.

LBP Packaging (Shenzhen) Co. Ltd., 1 F Building A Reservoir Road No. 3 Huangpu, Shajing Office of the Streets, Baoan District Shenzhen, Guangdon China 5181000.

Spark Innovators, Corp., 41 Kulick Road, Fairfield, NJ 07004.

B. Marlboros International Ltd. (HK), Unit A 12f Billion Center Tower A, No. 1 Wang Kwong Road Kowloon Bay, Hong Kong.

Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109–5210.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission,

shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 4, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21378 Filed 9–8–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–888]

Certain Silicon Microphone Packages and Products Containing Same; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically, a limited exclusion order for certain silicon microphone packages and products containing same, imported by named respondents GoerTek, Inc. of Weifang, China and GoerTek Electronics, Inc. of Sunnyvale, California. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on August 29, 2014. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order within a commercially reasonable time; and

(v) explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on September 30, 2014.

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. 888") 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.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337),

and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50

By order of the Commission.

Issued: September 3, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21354 Filed 9–8–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 3, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and the State of Indiana* v. *Atlantic Richfield Company and E. I. du Pont de Nemours and Company,* Civil Action No. 2:14–cv–312.

In the Complaint, the United States and the State of Indiana allege that Atlantic Richfield Company ("ARC") and E. I. du Pont de Nemours and Company ("DuPont") are liable under the Comprehensive Environmental Response, Compensation, and Liability Act for lead and arsenic contamination in the soils and subsurface soils of Zones 1 and 3 of Operable Unit 1 of the U.S. Smelter and Lead Refinery, Inc. Superfund Site ("Site") in East Chicago, Indiana.

Under the consent decree, ARC and DuPont will, *inter alia:* (i) Pay all of the United States' and Indiana's costs to clean up Zones 1 and 3 ("Z1&3") of Operable Unit 1 of the Site; (ii) properly transport and dispose of the wastes that are generated during the clean-up of Z1&3; and (iii) pay EPA for projected response costs, plus a premium, at certain "excluded" properties within Z1&3, unless ARC and DuPont are entitled to, and do, opt out of this payment in exchange for not securing a covenant not to sue and not receiving contribution protection on these "excluded" properties.

The publication of this notice opens a period of public comment on the consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Atlantic Richfield Company, et al.,* D.J. Ref. No. 90–11–3–10884/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Acting Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611

During the public comment period, the consent decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check in the amount of $75.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the body of the Consent Decree without the exhibits, the cost is $15.50.

Randall M. Stone,

Acting Assistant Section Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–21383 Filed 9–8–14; 8:45 am]

BILLING CODE 4410–15–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 09–14]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, September 18, 2014: 10:00 a.m.—Oral hearing on Objection to Commission's Proposed Decisions in Claim Nos. IRQ–I–018, IRQ–I–022, and IRQ–I–025; 11:30 a.m.—Issuance of Proposed Decisions in claims against Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2014–21539 Filed 9–5–14; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of August 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/18/14 and 8/22/14]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85488	Sig Sauer Inc. (Workers)	Portsmouth, NH	08/18/14	08/16/14
85489	Arvato Digital Services (Workers)	Weaverville, NC	08/18/14	08/17/14
85490	Advanced Energy Industries, Inc. (State/One-Stop)	Fort Collins, CO	08/18/14	08/15/14
85491	Citibank N.A. (State/One-Stop)	Hartford, CT	08/18/14	08/15/14
85492	Eaton Corporation (Company)	Charlotte, NC	08/19/14	08/18/14
85493	STEMCO Crewson (Company)	Buffalo, NY	08/19/14	08/18/14
85494	Fluor-B&W Portsmouth LLC (Company)	Piketon, OH	08/20/14	08/19/14
85495	Sumitomo Electric Device Innovations USA, Inc. (Workers)	Albuquerque, NM	08/21/14	08/20/14
85496	Remington Arms, Inc. (State/One-Stop)	Ilion, NY	08/21/14	08/20/14
85497	Invista S.A.R.L, Power House Workers (Union)	Waynesboro, VA	08/22/14	08/21/14
85498	Hamilton Scientific (Workers)	DePere, WI	08/22/14	08/21/14
85499	Apex Tool Group (Company)	Springdale, AR	08/22/14	08/21/14

[FR Doc. 2014–21348 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,357]

Flextronics International Inc., Including On-Site Leased Workers From Aerotek, Onin, Protech, Coworx Staffing Services Also Known as Axcess, Vssi Llc Automation Personnel Services Inc., and Cornerstone Staffing Fort Worth, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 5, 2014, applicable to workers of Flextronics International Inc., including on-site leased workers from Aerotek, Onin, Protech, and CoWorx Staffing Services also known as Axcess, Fort Worth, Texas (TA–W–85,357) and Motorola Mobility LLC, Mobile Devices, a subsidiary Of Google, Inc., including on-site leased workers from Kelly OCG, TEKsystems, and TATA Consultancy Services, working on-site at Flextronics International Inc., Fort Worth, Texas (TA–W–85,357A). The Department's Notice of Determination was published in the **Federal Register** on August 22, 2014 (79 FR 49818).

In response to a request by the Texas Workforce Commission, the Department reviewed the certification for workers of the subject firm. The firm is engaged in production of cell phones.

The investigation confirmed that workers from Automation Personnel Services Inc., Cornerstone Staffing, and VSSI LLC worked on-site at the Fort Worth facility and were sufficiently under the operational control of the firm to be considered leased workers. The intent of the Department is to include all workers whose separation or threat of separation is attributable to the shift in production to a foreign country.

The amended notice applicable to TA–W–85,357 is hereby issued as follows:

All workers of Flextronics International Inc., including on-site leased workers from Aerotek, Onin, Protech, CoWorx Staffing Services also known as Axcess, Automation Personnel Services Inc., Cornerstone Staffing, and VSSI LLC, Fort Worth, Texas (TA–W–85,357) and Motorola Mobility LLC, Mobile Devices, a subsidiary Of Google, Inc., including on-site leased workers from Kelly OCG, TEKsystems, and TATA Consultancy Services, working on-site at Flextronics International Inc., Fort Worth, Texas (TA–W–85,357A), who became totally or partially separated from employment on or after June 3, 2013, through August 5, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 22nd day of August, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21345 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,900; TA–W–82,900A; TA–W–82,900B]

Honeywell International, Inc., Aerospace Order Management Division Process Solutions, In Circuit Test Engineers and Customer Service Division Including On-Site Leased Workers From Tapfin-Manpower Group Solutions Three Locations In Phoenix, Arizona; Honeywell International, Inc., Aerospace Order Management Division And Customer Service Division Including On-Site Leased Workers From Tapfin-Manpower Group Solutions Tempe, Arizona; Honeywell International, Inc., Aerospace Order Management Division and Customer Service Division Including On-Site Leased Workers From Tapfin-Manpower Group Solutions Tulsa, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 1, 2013, applicable to workers of Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, including on-site leased workers from Tapfin-Manpower Group Solutions,

Tulsa, Oklahoma, (TA–W–82,900B). The Department's notice of determination was published in the **Federal Register** on November 21, 2013 (Volume 78, No. 225 FR 69881).

At the request of workers and a State Workforce Official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of order management services, in circuit testing services, and customer services. The investigation confirmed that worker separations in the Customer Service Division are attributable to an acquisition of services from a foreign country, as were the separations in the other divisions. The worker group includes off-site workers reporting to the certified locations.

The amended notice applicable to TA–W–82,900, TA–W–82,900A, TA–W–82,900B, is hereby issued as follows:

All workers of Honeywell International, Inc., Aerospace Order Management Division, Process Solutions, In Circuit Test Engineers, Customer Service Division, including on-site leased workers from, Tapfin-Manpower Group Solutions, three locations in Phoenix, Arizona, (TA–W–82,900), Honeywell International, Inc., Aerospace Order Management Division, Customer Service Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tempe, Arizona, (TA–W–82,900A), and Honeywell International, Inc., Aerospace Order Management Division, Customer Service Division, including on-site leased workers from Tapfin-Manpower Group Solutions, Tulsa, Oklahoma, (TA–W–82,900B), who became totally or partially separated from employment on or after July 11, 2012 through November 1, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through November 1, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 22nd day of August 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21347 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 18, 2014 through August 22, 2014.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,186, KomTek Technologies, Worchester, Massachusetts. March 28, 2013.

85,214, ConAgra Foods, Inc., Dunkirk, New York. April 3, 2013.

85,214A, ConAgra Foods, Inc., Fredonia, New York. April 3, 2013.

85,364, New Process Steel, El Paso, Texas. June 6, 2013.

85,380, Clayburn, Inc., Grantsville, Maryland. June 17, 2013.

85,415, Maggy London International, Limited, New York, New York. June 30, 2013.

85,417, West Linn Paper Company, West Linn, Oregon. July 8, 2013.

85,426, Precision Contract Manufacturing, Inc., Springfield, Vermont. July 15, 2013.

85,428, Mallinckrodt Pharmaceuticals, St. Louis, Missouri. July 16, 2013.

85,449, Nilfisk-Advance, Inc., Springdale, Arkansas. July 28, 2013.

85,455, Coastal Vision, U.S., Inc., Blaine, Washington, July 28, 2013.

85,459, Superior Industries International Arkansas, LLC., Rogers, Arkansas. July 31, 2013.

85,472, Global Gases America, Inc., Bethlehem, Pennsylvania. August 7, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,280, ClearEdge Power LLC., South Windsor, Connecticut.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,249, Mitel, Inc., Mesa, Arizona.

85,293, Microsemi Corporation, Allentown, Pennsylvania.

85,375, Caterpillar, Inc., Pearisburg, Virginia.

85,420, Swank Inc., Taunton, Massachusetts.

85,463, Moser Baer Technologies, Inc., Fairpoint, New York.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,430, EveryWare Global, Inc., Monaca, Pennsylvania.

85,437, Microsemi Corporation, Garden Grove, California.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,270, Honeywell International, Inc., Phoenix, Arizona.

85,471, Motorola Mobility, Fort Worth, Texas.

I hereby certify that the aforementioned determinations were issued during the period of *August 18, 2014 through August 22, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC this 28th day of August 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–21349 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0181]

Coke Oven Emissions Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified by the Coke Oven Emissions Standard (29 CFR 1910.1029).

DATES: Comments must be submitted (postmarked, sent, or received) by November 10, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0181, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0181) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled "**SUPPLEMENTARY INFORMATION**".

Docket: To read or download comments or other material in the

docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the Coke Oven Emissions Standard provide protection for workers from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor workers' exposure to coke oven emissions, monitor worker health, and provide workers with information about their exposures and the health effects of exposure to coke oven emissions.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Coke Oven Emissions Standard (29 CFR 1910.1029). OSHA is requesting an adjustment decrease of 2,448 burden hours (from 54,241 hours to 51,793 hours). The adjustment decrease is due to a decrease in the number of batteries that are subject to the Standard. The adjustment of the burden hours are shown in detail by provision in the supporting statement.

Type of Review: Extension of a currently approved collection.

Title: Coke Oven Emissions Standard (29 CFR 1910.1029).

OMB Control Number: 1218–0128.

Affected Public: Business or other for-profits.

Number of Respondents: 19.

Frequency of Responses: On occasion.

Total Responses: 41,348.

Average Time per Response: Varies from five minutes (.08 hour) to obtain a physician's certificate to 12 hours to develop a compliance program.

Estimated Total Burden Hours: 51,793.

Estimated Cost (Operation and Maintenance): $884,787.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0181) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 4, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–21399 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0181]

Coke Oven Emissions Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified by the Coke Oven Emissions Standard (29 CFR 1910.1029).

DATES: Comments must be submitted (postmarked, sent, or received) by November 10, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0181, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0181) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the Coke Oven Emissions Standard provide protection for workers from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor workers' exposure to coke oven emissions, monitor worker health, and provide workers with information about their exposures and the health effects of exposure to coke oven emissions.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Coke Oven Emissions Standard (29 CFR 1910.1029).

OSHA is requesting an adjustment decrease of 2,448 burden hours (from 54,241 hours to 51,793 hours). The adjustment decrease is due to a decrease in the number of batteries that are subject to the Standard. The adjustment of the burden hours are shown in detail by provision in the supporting statement.

Type of Review: Extension of a currently approved collection.

Title: Coke Oven Emissions Standard (29 CFR 1910.1029).

OMB Control Number: 1218–0128.

Affected Public: Business or other for-profits.

Number of Respondents: 19.

Frequency of Responses: On occasion.

Total Responses: 41,348.

Average Time per Response: Varies from five minutes (.08 hour) to obtain a physician's certificate to 12 hours to develop a compliance program.

Estimated Total Burden Hours: 51,793.

Estimated Cost (Operation and Maintenance): $884,787.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name

and the OSHA docket number (Docket No. OSHA–2011–0181) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled "ADDRESSES"). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 4, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–21371 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0005]

Federal Advisory Council on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations and announcement of new members

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit "rolling" nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH), and announces the new procedures for the "rolling" nominations. This **Federal Register** notice also announces the appointment of six individuals to serve on FACOSH.

DATES: You must submit (postmarked, sent, transmitted, or received) your nominations by October 5, 2014.

ADDRESSES: You may submit nominations and supporting materials using one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov*, the federal eRulemaking portal. Follow the online instructions for submitting nominations;

Facsimile: If your nominations and supporting materials and attachments do not exceed 10 pages, you may FAX them to the OSHA Docket Office at (202) 693–1648;

Mail, express delivery, hand delivery, messenger or courier service: You may send nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2014–0005, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries by hand, express mail, messenger, and courier service are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.s.t.

Instructions: Your submissions and supporting materials must include the agency name and docket number for this **Federal Register** notice (OSHA–2014–0005). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about special security procedures for submitting nominations and supporting materials. For additional information on submitting nominations and supporting materials, see the Supplementary Information section of this notice.

OSHA will post all submissions, including any personal information you provide, without change on *http://www.regulations.gov*. Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2014–0005 at *http://www.regulations.gov*. All documents in the docket are listed in the index of that Web site; however, some documents (e.g., copyrighted) are not publicly available to read or download from that Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Francis Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov*.

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, Directorate of Enforcement Programs, Room N–3622, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov*.

SUPPLEMENTARY INFORMATION:

Nominations for FACOSH Membership

The Assistant Secretary of OSHA invites interested individuals to submit nominations for membership on FACOSH. In addition, this notice announces new nomination procedures for FACOSH.

Background. FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 13511). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce, and how to encourage the establishment and maintenance of effective occupational safety and health programs in each federal agency.

FACOSH membership. FACOSH is comprised of 16 members who the Secretary appoints to staggered terms of up to three years. The categories of FACOSH membership and the number

of new members to be appointed to three-year terms beginning January 1, 2015 include:

- Eight members who are federal agency management representatives—Three management representatives will be appointed; and
- Eight members who are representatives of labor organizations that represent federal employees—Two federal employee representatives will be appointed.

FACOSH members serve at the pleasure of the Secretary and may be appointed to successive terms. FACOSH meets at least twice a year.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested federal agency, labor organization, or individual(s) may nominate one or more qualified persons for membership on FACOSH. Interested individuals also are invited and encouraged to submit statements in support of particular nominees.

Nomination requirements. Submission of nominations must include the following information:

1. The nominee's name, contact information and current occupation or position;
2. The nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations and committees;
3. Category of membership (management, labor) the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that address the nominee's suitability to serve on FACOSH;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience and expertise in occupational safety and health, particularly as it pertains to the federal workforce; and
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings, and has no apparent conflicts of interest that would preclude membership on FACOSH.

Member selection. The Secretary appoints FACOSH members based upon criteria that include the nominee's level of responsibility for occupational safety and health matters involving the federal workforce; experience and competence in occupational safety and health; and willingness and ability to regularly and fully participate in FACOSH meetings. Federal agency management nominees who serve as their agency's Designated Agency Safety and Health Official (DASHO), or at an equivalent level of responsibility within their respective federal agencies, are preferred as management members. Labor nominees who have responsibilities for federal employee occupational safety and health matters within their respective labor organizations are preferred as labor members.

The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new FACOSH members in the **Federal Register**.

Public Participation

Instructions for submitting nominations. Interested individuals may submit nominations and supplemental materials using one of the methods listed in the **ADDRESSES** section. All nominations, attachments and other materials must identify the agency/labor organization name and the docket number for this **Federal Register** notice. You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to submit additional materials in reference to an electronic or FAX submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional material must clearly identify your electronic or FAX submission by name and docket number for this **Federal Register** notice so that the materials can be attached to your submission.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

All submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information, such as Social Security numbers and birthdates. Guidance on submitting nominations and materials in response to this **Federal Register** notice is available at *http://www.regulations.gov* and from the OSHA Docket Office.

Access to docket and other materials. To read or download nominations and additional materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2013–0013 at *http://www.regulations.gov*. All submissions are listed in the index of that docket. However, some documents (*e.g.*, copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for information about materials not available through *http://www.regulations.gov* and for assistance in using the internet to locate submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also is available at OSHA's Web page at *http://www.osha.gov*.

New Nomination Procedures

OSHA is establishing new membership nomination procedures for FACOSH. With this notice, OSHA begins accepting and considering FACOSH nominations on a "rolling basis." OSHA will consider any nomination you submit by October 5, 2014, for membership positions that open on January 1, 2015, as well as for any vacancy that occurs during 2015, such as due to a member resignation. In addition, OSHA will roll over the nominations received in response to this notice for consideration for membership positions that open January 1, 2016.

Each year OSHA will publish a request for nominations for membership positions. OSHA will consider nominations received in response to that notice for the following:

- Membership positions beginning January 1 of the next year;
- Vacancies that occur during the next year; and
- Membership positions that begin January 1 of the year that follows.

OSHA believes that rolling over nominations will make it easier for interested persons to be considered for membership on FACOSH because they will not have to submit a nomination every year. The new procedures also will provide OSHA with a broad base of nominations to consider in order to ensure that FACOSH membership is fairly balanced, which the Federal Advisory Committee Act requires (5 U.S.C. App. 2, Section (5)(b)(2); 41 CFR 102–3.30(c)).

FACOSH Appointments

FACOSH is comprised of 16 members; eight representing federal agency management and eight from labor

organizations representing federal employees. The Secretary has appointed the following individuals to a three-year term on FACOSH:

Federal employee representatives:

- Carolyn D. Bland-Bowles, American Federation of State, County and Municipal Employees;
- Dennis P. Phelps, International Brotherhood of Electrical Workers; and
- Mark J. Segall, National Association of Agriculture Employees.

Federal agency management representatives:

- Wesley J. Carpenter, U.S. Environmental Protection Agency;
- Wayne Quillin, U.S. Department of State; and
- Maureen Sullivan, U.S. Department of Defense.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 668, 5 U.S.C. 7902, 5 U.S.C. App. 2, Executive Orders 12196 and 13511, Secretary of Labor's Order 1–2012 (77 FR 3912 (1/25/2012)), 29 CFR Part 1960, and 41 CFR Part 102–3.

Signed at Washington, DC on September 4, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–21373 Filed 9–8–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, September 24, 2014

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

8595 Special Investigation Report—Railroad and Rail Transit Roadway Worker Protection.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, September 17, 2014.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov*.

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov*.

FOR MEDIA INFORMATION CONTACT: Eric Weiss, (202) 314–6100 or by email at *eric.weiss@ntsb.gov*.

Dated: Friday, September 5, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–21570 Filed 9–5–14; 4:15 pm]

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NUCLEAR REGULATORY COMMISSION

[NRC–2014–0190]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of six amendment requests. The amendment requests are for Fermi 2; Beaver Valley Power Station, Units 1 and 2; Monticello Nuclear Generating Plant; South Texas Project, Units 1 and 2; Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2; South Texas Project, Units 1 and 2; and Wolf Creek Generating Station. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by October 9, 2014. A request for a hearing must be filed by November 10, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by September 19, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0190. 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.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mable Henderson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3760, email: *Mable.Henderson@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0190 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0190.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection 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 (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2014–0190 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a 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 should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one

contention will not be permitted to participate as a party.

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.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or 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 E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the 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 NRC'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 public 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: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or

home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline 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).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: July 2, 2014. A publicly-available version is in ADAMS under Accession No. ML14183B528.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The license amendment request pertains to the Cyber Security Plan (CSP) implementation schedule change in the completion date for Milestone 8. Milestone 8 pertains to the date that full implementation of the CSP for all safety, security, and emergency preparedness functions will be achieved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the Fermi 2 Cyber Security Plan (CSP) M8 full implementation date as set forth in the Fermi 2 CSP Implementation Schedule. The revision of the full implementation date for the Fermi 2 CSP does not involve modifications to any safety-related structures, systems or components (SSCs). The implementation schedule provides a timetable for fully implementing the Fermi 2 CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber-attacks up to and including the design basis cyber-attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber-attacks. The revision of the Fermi 2 CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The implementation of the Fermi 2 CSP does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment does not alter the way any safety-related SSC functions and does not alter the way the plant is operated.

The CSP provides assurance that safety-related SSCs are protected from cyber-attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment does not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Maters, DTE Energy, General Counsel—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David L. Pelton.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Units 1 and 2, (BVPS–1 and BVPS–2) Beaver County, Pennsylvania

Date of amendment request: December 23, 2013, as supplemented by letter dated February 14, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14002A086, and ML14051A499, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would change the BVPS–1 and BVPS–2 facility operating license and technical specifications. Specifically, the amendment requests review and approval to transition the fire protection licensing basis at BVPS, from Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.48(b), to 10 CFR 50.48(c), National Fire Protection Association (NFPA) 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants." The adoption of NFPA–805, would provide BVPS with a risk-informed, performance-based fire protection program, and allow them to make changes to their fire protection program without prior NRC approval, only if the changes would not adversely affect the plant's ability to achieve and maintain safe shutdown in the event of a fire.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of BVPS–1 and BVPS–2 in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been satisfied. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents (DBA) at BVPS–1 and BVPS–2. The proposed amendment does not adversely affect accident initiators nor alters design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, or components (SSCs) to perform their design functions. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of the proposed amendment is to permit BVPS–1 and BVPS–2 to adopt a new fire protection licensing basis, which complies with the requirements of 10 CFR 50.48(c) and the guidance in Regulatory Guide 1.205, Revision 1 [Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants (ADAMS Accession No. ML092730314)]. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR 50, Appendix R-required fire protection features (69 FR 33536; June 16, 2004).

Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met. NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR 50 and meets the underlying intent of the NRC's existing fire protection regulations and guidance. It also achieves defense in depth and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard and, if there are any increases in core damage frequency (CDF) or risk the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of the proposed amendment does not increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function. The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The applicable radiological dose criteria will continue to be met. Therefore, the consequences of any accident previously evaluated are not increased with the implementation of the proposed amendment.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of BVPS–1 and BVPS–2 in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with off-site dose was included in the evaluation of DBAs documented in the UFSAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and 10 CFR 50.[4]8(c) and the guidance in Regulatory Guide 1.205, Revision 1 will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators or alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to permit BVPS–1 and BVPS–2 to adopt a new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and 10 CFR 50.48(c) and the guidance in Regulatory Guide 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR 50, Appendix R-required fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met.

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Based on this, the implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Operation of BVPS–1 and BVPS–2 in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The risk evaluation of plant changes, as appropriate, were measured quantitatively for acceptability using the delta CDF and delta [Large Early Release Frequency] LERF criteria from Section 5.3.5 of NEI 04–02 and of Regulatory Guide 1.205, Revision 1. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. This amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to permit BVPS–1 and BVPS–2 to adopt a new fire protection licensing basis, which complies with the requirements in 10 CFR 50.48(c) and the guidance in Regulatory Guide 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR 50, Appendix R-required fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met.

The proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits. Therefore, the transition to NFPA 805 does not involve a significant reduction in the margin of safety. The requirements of NFPA 805 are structured to implement the NRC's mission of the protection of public health and safety, promote the common defense and security, and protect the environment. NFPA 805 is also consistent with the key principles for evaluating license basis changes as described in Regulatory Guide 1.174 [An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis (ADAMS Accession No. ML100910006)] and is consistent with the defense in depth philosophy while maintaining sufficient safety margins.

[Therefore, the proposed change does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

Acting NRC Branch Chief: Robert G. Schaaf.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: July 15, 2013, as supplemented by letters dated January 31, 2014, March 12, 2014, April 29, 2014, and May 9, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML13200A185, ML14035A297, ML14077A291, ML14153A498, and ML14132A189, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would allow for a transition to the AREVA ATRIUM 10XM fuel design and implementation of AREVA safety analysis methods at the MNGP. The transition to the AREVA ATRIUM 10XM fuel design would permit use at Extended Power Uprate conditions with operation in the Maximum Extended Load Line Limit Analysis (MELLLA) power-flow operating domain. Specifically, NSPM proposed to revise Technical Specification (TS) 5.6.3, "Core Operating Limits Report (COLR)," to add AREVA analysis methodologies to the list of approved methods used in determining core operating limits. Northern States Power Company—Minnesota also proposes to (1) revise TS 2.1, "SL [Safety Limits]," to change the steam dome pressure associated with safety limits when using AREVA safety analysis methods, and (2) insert an editorial change to TS 4.2.1, "Reactor Core, Fuel Assemblies," to add "water channel," in addition to the current "water rod," to reflect the design of the AREVA ATRIUM 10XM fuel assembly design feature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with minor editorial revisions designated in brackets ([ ]):

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Changing fuel designs and making an editorial change to TS will not increase the probability of a Loss of Coolant Accident (LOCA). The fuel cannot increase the probability of a primary coolant system breach or rupture, as there is not interaction between the fuel and the system piping. The fuel will continue to meet the 10 CFR 50.46, ["Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,"] limits. Therefore, the consequences of a LOCA will not be increased.

The probability of a Control Rod Drop Accident (CRDA) does not increase because the ATRIUM 10XM fuel channel is mechanically compatible with the co-resident fuel and existing control blade designs. The mechanical interaction and friction forces between the ATRIUM 10XM channel and control blades would not be higher than previous designs. In addition, routine plant testing includes confirmation of adequate control blade to control rod drive coupling. The probability of a CRDA is not increased with the use of ATRIUM 10XM fuel. CRDA consequences are evaluated on a cycle-specific basis, confirming the number of calculated rod failures remains within the Updated Safety Analysis Report (USAR) design basis. Similarly, changing the fuel design and making an editorial change to TS cannot increase the probability of an anticipated operation occurrence (AOO). As a passive component, the fuel does not interact with plant operating or control systems. Therefore, the fuel change cannot affect the initiators of the previously evaluated AOO transient events. Thermal limits for the new fuel will be determined on a cycle-specific basis, ensuring the specified acceptable fuel design limits continue to be met. Therefore, the consequences of a previously evaluated AOO will not increase.

A disposition of the plant's postulated accidents with radiological consequences indicated that the consequences of only two accidents could be affected by the proposed change in fuel type; the LOCA and the CRDA. Revised dose analyses using the approved Alternative Source Term methodology at Extended Power Uprate (EPU) rated power concluded that the change in fuel type resulted in small variations in the radiological source term for the reactor core and a corresponding slight difference in the overall dose consequences. At no location did the calculated dose increase more than two percent compared to previously-submitted radiological dose at EPU power levels. Dose consequences for the LOCA and CRDA with an ATRIUM 10XM fuel source term remained well below the regulatory limits of 10 CFR 50.67, ["Accident source term,"] and Regulatory Guide 1.183, ["Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors."]

The proposed change to Reactor Core Safety Limits involves a technical evaluation that demonstrates the range of applicability for the AREVA Critical Power Correlations will always bound the postulated pressures of plant transients using the AREVA safety analysis methodology. As a technical evaluation, this proposed change involves no physical change to a system, structure, component, or setpoint. Therefore, the proposed change in no way can affect the probability or the consequences of an accident previously evaluated.

[Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The ATRIUM 10XM fuel product has been designed to maintain neutronic, thermal-hydraulic, and mechanical compatibility with the co-resident fuel designs currently in use at MNGP. The ATRIUM 10XM fuel has been designed to meet fuel licensing criteria specified in NUREG–0800, "Standard Review Plan for Review of Safety Analysis Reports for Nuclear Power Plants." Compliance with these criteria ensures the fuel will not fail in an unexpected manner.

A change in fuel design and an editorial change to TS cannot create any new accident initiators because the fuel is a passive component having no direct influence on the performance of operating plant systems and equipment. Hence, a fuel design change cannot create a new type of malfunction leading to a new or different kind of accident. Consequently, the proposed fuel design change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Also, as a technical evaluation, the proposed change to Reactor Core Safety Limits involves no physical change to a system, structure, component, or setpoint. Therefore, this proposed change could in no way introduce a new physical interaction that would create the possibility of a new or different kind of accident from any accident previously evaluated.

[Therefore, the proposed change does not result in the possibility of a new or different kind of accident from any accident previously evaluated.]

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The ATRIUM 10XM fuel is designed to comply with the fuel licensing criteria specified in NUREG–0800. Cycle-specific and cycle-independent safety analyses are performed ensuring no fuel failures will occur as the result of anticipated operational occurrences, and dose consequences for accidents remain with the bounds of 10 CFR 50.67. Applicable regulatory margins and requirements are maintained.

The proposed change to Reactor Core Safety Limits is consistent with, and within the capabilities of the applicable NRC approved critical power correlation, and thus continues to ensure that valid critical power calculations are performed. No setpoints at which protective actions are initiated are altered by the proposed change. The proposed change does not alter the manner in which the safety limits are determined. This change is consistent with plant design and does not change the TS operability requirements; thus, previously evaluated accidents are not affected by this proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David L. Pelton.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: December 24, 2013, as supplemented by letter dated June 23, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14016A079 and ML14174B239, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Cyber Security Plan (CSP) Milestone 8 full implementation date as set forth in the Cyber Security Plan Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the PSEG Cyber Security Plan (CSP) Implementation Schedule Milestone 8 (M8) full implementation date as set forth in the PSEG CSP Implementation Schedule. The revision of the full implementation date for M8 does not involve modifications to any safety-related structures, systems, or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the PSEG CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The revision of the PSEG CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The implementation of the PSEG CSP does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation (dose or exposure) to the public. The proposed amendment does not alter the way any safety-related SSCs function and does not alter the way the plant is operated. The CSP provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment does not degrade the confidence in the ability of the fission product barriers to limit the level of radiation (dose or exposure) to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

Acting NRC Branch Chief: Robert G. Schaaf.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 8, 2014, as supplemented by letter dated May 8, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14142A018 and ML14142A013, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the South Texas Project (STP) Cyber Security Plan (CSP) Milestone 8 full implementation date as set forth in the STP CSP Implementation Schedule. The amendments would also revise paragraph 2.H of Facility Operating License Nos. NPF–76 for STP, Unit 1 and NFP–80 for STP, Unit 2, by incorporating the revised CSP implementation schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the STP CSP Milestone 8 full implementation date as set forth in the STP CSP Implementation Schedule. The revision of the full implementation date for the STP CSP does not involve modifications to any safety-related structures, systems, or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the STP CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The revision of the STP CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The implementation of the STP CSP does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment does not alter the way any safety related SSC functions and does not alter the way the plant is operated. The STP CSP provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment does degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 26, 2014. A publicly-available version is in ADAMS under Accession No. ML14064A328.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification 5.6.5, "CORE OPERATING LIMITS REPORT (COLR)," to incorporate Westinghouse Electric Company LLC's topical report WCAP–16009–P–A, "Realistic Large-Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)," January 2005, to the list of analytical methods used to determine the core operating limits. A non-proprietary version of the topical report, designated as WCAP–16009–NP–A, is available in ADAMS under Accession Nos. ML050910159 and ML050910161.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 5.6.5 to incorporate a new large break LOCA [loss-of-coolant accident] analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to Specification 5.6.5b. as a method used for establishing core operating limits.

Accident analyses are not accident initiators; therefore, the proposed change does not involve a significant increase in the probability of an accident. The analyses using ASTRUM demonstrated that the acceptance criteria in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," were met. Large break LOCA analyses performed consistent with the methodology in Nuclear Regulatory Commission (NRC) approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant increase in the consequences of an accident. No physical changes to the plant are associated with the proposed change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change revises Specification 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to Specification 5.6.5b. as a method used for establishing core operating limits. There are no physical changes being made to the plant as a result of using the Westinghouse ASTRUM analysis methodology in WCAP–16009–P–A for performance of the large break LOCA analyses. Large break LOCA analyses performed consistent with the methodology in NRC approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions; demonstrate that 10 CFR 50.46 acceptance criteria are met. No new modes of plant operation are being introduced. The configuration, operation, and accident response of the structures or components are unchanged by use of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analyses are within the design limits of existing plant equipment.

In addition, employing the Westinghouse ASTRUM large break LOCA analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to instrumentation actuation setpoints. Adding the reference to WCAP–16009–P–A in Specification 5.6.5b. is an administrative change that does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises Specification 5.6.5 to incorporate a new large break LOCA analysis methodology. Specifically, the proposed change adds WCAP–16009–P–A to Specification 5.6.5b. as a method used for establishing core operating limits. The analyses using ASTRUM demonstrated that the applicable acceptance criteria in 10 CFR 50.46 are met. Margins of safety for large break LOCAs include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria are not being changed by this proposed new methodology. Large break LOCA analyses performed consistent with the methodology in NRC approved WCAP–16009–P–A, including applicable assumptions, limitations and conditions, demonstrate that 10 CFR 50.46 acceptance criteria are met; thus, this change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

FirstEnergy Nuclear Operating Company, *et al.*, Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Units 1 and 2, (BVPS–1 and BVPS–2) Beaver County, Pennsylvania

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

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. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

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 14th day of August 2014.

For the Nuclear Regulatory 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 hearing and opportunity 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	U.S. 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. 2014–19880 Filed 9–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 04009067; NRC–2014–0020]

Uranerz Energy Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Temporary exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a temporary exemption from certain NRC financial assurance requirements to Uranerz Energy Corporation, (Uranerz) in response to its annual financial assurance update for the Nichols Ranch in-situ recovery (ISR) Project. Issuance of this temporary exemption will not remove the requirement for Uranerz to provide adequate financial assurance through an approved mechanism, but will allow the NRC staff to further evaluate whether the State of Wyoming's separate account provision for financial assurance instruments it holds is consistent with the NRC's requirement for a standby trust agreement.

ADDRESSES: Please refer to Docket ID NRC–2014–0020 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–2014–0020. 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 ADAMS Public Documents collection 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: Ron C. Linton, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–7777; email: *Ron.Linton@nrc.gov*.

I. Background

Criterion 9 of part 40 of Title10 of the *Code of Federal Regulations* (10 CFR), appendix A, and NRC materials license SUA–1597, License Condition 9.5, require Uranerz to submit to the NRC for review and approval, an annual update of the financial surety to cover third-party costs for decommissioning and decontamination for the Nichols Ranch ISR Project. The Nichols Ranch ISR Project is located in Johnson and Campbell Counties, Wyoming. Uranerz submitted to the NRC its annual surety update for 2013–2014 in submissions dated December 9, 2013, and January 31, 2014 (ADAMS Accession Nos. ML13353A634 and ML14041A337 respectively). The NRC's staff reviewed the annual financial surety updates and found the values reasonable for the required reclamation activities (ADAMS Accession No. ML14203A358). Uranerz maintains an approved financial assurance instrument in favor of the State of Wyoming; however, it does not have a standby trust agreement (STA) in place, as required by 10 CFR part 40, appendix A, Criterion 9.

II. Description of Action

As of December 17, 2012, the NRC's uranium milling licensees, which are regulated, in part, under 10 CFR part 40, appendix A, Criterion 9, are required to have an STA in place. Criterion 9 provides that if a licensee does not use a trust as its financial assurance mechanism, then the licensee is required to establish a standby trust fund to receive funds in the event the Commission or State regulatory Agency exercises its right to collect the funds provided for by surety or letter of credit. The purpose of an STA is to provide a separate account to hold decommissioning funds in the event of a default. Consistent with the provisions of 10 CFR part 40, appendix A, Criterion 9(d), Uranerz has consolidated its NRC financial assurance sureties with those it is required to obtain by the State of Wyoming, and the financial instrument is held by the State of Wyoming. Uranerz has not established an STA, nor has it requested an exemption from the requirement to do so.

Wyoming law requires that a separate account be set up to receive forfeited decommissioning funds, but does not specifically require an STA. Section 35–11–424(a) of the Code of Wyoming states that "[a]ll forfeitures collected under the provisions of this act shall be deposited with the State treasurer in a separate account for reclamation purposes." Under Wyoming Department of Environmental Quality (WDEQ) financial assurance requirements, WDEQ holds permit bonds in a fiduciary fund called an agency fund. If a bond is forfeited, the forfeited funds are moved to a special revenue account. Although the Wyoming special revenue account is not an STA, the special revenue account serves a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for reclamation (i.e., decommissioning) purposes.

The NRC has the discretion, under 10 CFR 40.14(a), to grant an exemption from the requirements of a regulation in 10 CFR part 40 on its own initiative, if the NRC determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The NRC has elected to grant Uranerz an exemption to the STA requirements in 10 CFR part 40, appendix A, Criterion 9, until December 31, 2016, to allow the NRC to evaluate whether the State of Wyoming's separate account requirements for financial assurance instruments it holds is consistent with the NRC's STA requirements.

III. Discussion

A. Exemption Is Authorized by Law

The NRC staff concludes that the exemption is authorized by law as 10 CFR 40.14(a) expressly allows for an exemption to the requirements of the regulation in 10 CFR part 40, appendix A, Criterion 9, and the exemption is not contrary to any provision of the Atomic Energy Act of 1954, as amended.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The exemption is related to the financial surety. The requirement that Uranerz provide adequate financial assurance through an approved mechanism (e.g., a surety bond, irrevocable letter of credit) remains unaffected by the exemption. Rather, the exemption only pertains to the establishment of a dedicated trust in which funds could be deposited in the event that the financial assurance mechanism would need to be liquidated. The regulations in 10 CFR part 40, appendix A, Criterion 9(d), allow for the financial or surety arrangements to be consolidated within a State's similar financial assurance instrument. The NRC has determined that while the WDEQ does not require an STA, the special revenue account may serve a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for site-specific reclamation (decommissioning) purposes. Because Uranerz remains obligated to establish an adequate financial assurance mechanism for its licensed sites, the NRC has approved such a mechanism, and the NRC has determined that sufficient funds are available in the event that the site needs to be decommissioned. A temporary delay in establishing an STA does not impact the present availability and adequacy of the actual financial assurance mechanism. Therefore, the temporary exemption being issued by the NRC herein presents no undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The exemption does not involve or implicate the common defense or security. Therefore, the exemption has no effect on the common defense and security.

D. The Exemption Is in the Public Interest

The exemption will enable the NRC staff to further evaluate whether the State of Wyoming's separate account provision for financial assurance instruments it holds is consistent with the NRC's requirement for a standby trust agreement. The evaluation will allow the NRC to determine whether Uranerz's compliance with the state law provision will sufficiently address the NRC's requirement as well, and therefore provide clarity on the implementation of the NRC's regulation in this instance. Therefore, granting the exemption is in the public interest.

E. Environmental Considerations

The NRC staff has determined that granting of an exemption from the requirements of 10 CFR part 40, appendix A, Criterion 9 belongs to a category of regulatory actions that the NRC, by regulation, has determined do not individually or cumulatively have a significant effect on the environment,

and as such do not require an environmental assessment. The exemption from the requirement to have an STA in place is eligible for categorical exclusion under 10 CFR 51.22(c)(25)(vi)(H), which provides that exemptions from surety, insurance, or indemnification requirements are categorically excluded if the exemption would not result in any significant hazards consideration; change or increase in the amount of any offsite effluents; increase in individual or cumulative public or occupational radiation exposure; construction impacts; or increase in the potential for or consequence from radiological accidents. The staff finds that the STA exemption involves surety, insurance and/or indemnity requirements and that granting Uranerz this temporary exemption from the requirement of establishing a STA would not result in any significant hazards or increases in offsite effluents, radiation exposure, construction impacts, or potential radiological accidents. Therefore, an environmental assessment is not required.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 40.14(a), the temporary exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is in the public interest. Therefore, the NRC hereby grants Uranerz a temporary exemption from the requirement in 10 CFR part 40, appendix A, Criterion 9, to set up an STA to receive funds in the event the NRC or the State regulatory agency exercises is right to collect the surety. This exemption will expire on December 31, 2016. At that time, Uranerz will be required to ensure that its financial assurance arrangement is in compliance with the NRC's STA requirements.

Dated at Rockville, Maryland, this 28th day of August 2014.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–21413 Filed 9–8–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension: Form 10–D, SEC File No. 270–544, OMB Control No. 3235–0604.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on this collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form 10–D is a periodic report used by asset-backed issuers to file distribution and pool performance information pursuant to Rule 13a–17 (17 CFR 240.13a–17) or Rule 15d–17 (17 CFR 240.15d–17) of the Securities Exchange Act of 1934 ("Exchange Act")(15 U.S.C. 78a *et seq.*). The form is required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by approximately 2,169 respondents. Each respondent files an estimated 6 Form 10-Ds per year for a total of 13,014 responses. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 292,815 hours (22.5 hours per response × 13,014 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 3, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21366 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31240; 812–14320]

Garrison Capital, Inc., et al.; Notice of Application

September 3, 2014.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a) and 61(a) of the Act.

APPLICANTS: Garrison Capital Inc. ("Company"), Garrison Capital SBIC LP ("Garrison SBIC"), Garrison Capital Advisers LLC ("Garrison Adviser"), Garrison Capital SBIC Holdco Inc. ("Holdco") and Garrison Capital SBIC General Partner LLC ("General Partner").

SUMMARY OF THE APPLICATION: The Company requests an order to permit it to adhere to a modified asset coverage requirement.

FILING DATES: The application was filed June 6, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2014 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Julian Weldon, Garrison Capital, Inc., 1290 Avenue of the Americas, Suite 914, New York, NY 10104.

FOR FURTHER INFORMATION CONTACT: Emerson Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] The Company's investment objective is to provide its stockholders with both current income and capital appreciation primarily through debt investments and, to a lesser extent, equity investments. Garrison Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940, as amended.

2. Garrison SBIC, a Delaware limited partnership, has received a "green light letter" from the Small Business Administration ("SBA") and intends to submit an application to the SBA for a small business investment company ("SBIC") license to operate under the Small Business Investment Act of 1958 ("SBIA"). Garrison SBIC expects to rely on the exclusion from the definition of investment company contained in section 3(c)(7) of the Act. The Company currently owns a 99% limited partnership interest in Garrison SBIC. The General Partner, a Delaware limited liability company, is the general partner of Garrison SBIC. The General Partner owns 1% of Garrison SBIC in the form of a general partner interest. The Company currently holds 100 percent of the shares of Holdco, which holds a one percent membership interest in the General Partner.

Applicants' Legal Analysis:

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exemption from the definition of "investment company" under the 1940 Act (each, a "SBIC Subsidiary").[2] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Garrison SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Garrison SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit Garrison SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Garrison SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Garrison SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of a SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21381 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31239; File No. 812–14173]

Eagle Capital Appreciation Fund, et al.; Notice of Application

September 3, 2014.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Subadvisers (as defined below) and Non-Affiliated Subadvisers (as defined below) without shareholder approval and would grant relief from certain disclosure requirements. The requested order would supersede a prior order that granted relief solely with respect to Non-Affiliated Subadvisers.[1]

Applicants: Eagle Capital Appreciation Fund, Eagle Growth & Income Fund and Eagle Series Trust (each, a "Trust" and collectively, the "Trusts"), and Eagle Asset Management, Inc. (the "Adviser").

DATES: *Filing Dates:* The application was filed on July 1, 2013, and amended on October 25, 2013, on April 4, 2014 and on July 31, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

Applicants, 880 Carillon Parkway, St. Petersburg, Florida 33716.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551–6728, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. Each Trust is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company under the Act. Each Trust may offer one or more series of shares (each a "Fund," and collectively the "Funds"), each with its own distinct investment objectives, policies and restrictions. The Adviser is a Florida corporation registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), and serves as investment adviser to the Funds.

2. Applicants request an order to permit the Adviser, subject to the approval of the board of trustees of each Trust (collectively, the "Board"),[2] including a majority of the trustees who are not "interested persons" of the Trusts or the Adviser, as defined in section 2(a)(19) of the Act (the "Independent Trustees"), to, without obtaining shareholder approval: (i) Select certain wholly-owned and non-affiliated investment Subadvisers [3] to manage all or a portion of the assets of one or more of the Funds pursuant to an investment subadvisory agreement with each Subadviser (each a "Subadvisory Agreement" and collectively, the "Subadvisory Agreements"); and (ii) materially amend Subadvisory Agreements with the Subadvisers.[4] Applicants request that the relief apply to the named applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and (i) is advised by the Adviser or its successors; [5] (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions set forth in the application (each, a "Subadvised Fund").[6] The requested relief will not extend to any subadviser, other than a Wholly-Owned Subadviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund or of the Adviser, other than by reason of serving as a subadviser to one or more of the Subadvised Funds ("Affiliated Subadviser").

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Fund (each an "Investment Advisory Agreement" and, together, the "Investment Advisory Agreements"). Any future Adviser also will be registered with the Commission as an investment adviser under the Advisers Act. Each Investment Advisory Agreement has been or will be approved by the Board, including a majority of the Independent Trustees, and by the shareholders of the relevant Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Advisory Agreements comply or will comply with section 15(a) of the Act.

4. Pursuant to the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, has agreed or will agree to

[1] *Heritage Capital Appreciation Trust, et al.*, Investment Company Act Release Nos. 25252 (November 2, 2001) (notice) and 25301 (November 28, 2001) (order).

[2] The term "Board" also includes the board of trustees or directors of a future Subadvised Fund (as defined below), if different from the board of trustees of the Trusts.

[3] A "Subadviser" for a Fund is a Subadviser that is (i) an indirect or direct "wholly-owned subsidiary" (as such term is defined in the Act) of the Adviser, or (ii) a sister company of the Adviser that is an indirect or direct "wholly-owned subsidiary" (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (i) and (ii) a "Wholly-Owned Subadviser" and collectively, the "Wholly-Owned Subadvisers"), or (iii) not an "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Subadviser serves as a subadviser to one or more Funds (each a "Non-Affiliated Subadviser" and collectively, the "Non-Affiliated Subadvisers").

[4] Shareholder approval will continue to be required for any other subadviser changes and material amendments to an existing subadvisory agreement with any subadviser other than a Non-Affiliated Subadviser or a Wholly-Owned Subadviser (all such changes referred to herein as "Ineligible Subadviser Changes"), except as otherwise permitted by rule or other action of the Commission or its staff.

[5] For the purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[6] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Fund contains the name of a Subadviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the Subadviser.

provide a continuous investment program for each Fund, which includes determining the securities and other investments to be purchased, retained, sold or loaned by each Fund and the portion of such assets to be invested or held uninvested as cash. The Adviser will periodically review each Fund's investment policies and strategies and, based on the need of a particular Fund, may recommend changes to the investment policies and strategies of the Fund for consideration by the Board. For its services to each Fund, the Adviser receives or will receive an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement. Consistent with the terms of each Subadvised Fund's Investment Advisory Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to a Subadviser. The Adviser continues to have overall responsibility for the management and investment of the assets of each Subadvised Fund. These responsibilities include recommending the removal or replacement of Subadvisers, and determining the portion of that Subadvised Fund's assets to be managed by any given Subadviser and reallocating those assets as necessary from time to time.

5. Pursuant to the authority under the Investment Advisory Agreement, the Adviser may enter into Subadvisory Agreements with various Subadvisers on behalf of the Funds. The Adviser has entered into a Subadvisory Agreement with Eagle Boston Investment Management, Inc., a wholly-owned subsidiary of the Adviser. The Adviser also may, in the future, enter into Subadvisory Agreements with other Subadvisers on behalf of the Funds. The Subadvisory Agreements were or will be approved by the Board, including a majority of the Independent Trustees, and the shareholders of the Subadvised Fund in accordance with sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. In addition, the terms of the Subadvisory Agreements comply or will comply fully with the requirements of section 15(a) of the Act. The Subadvisers, subject to the oversight of the Adviser and the Board, determine or will determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that they select. The Adviser will compensate the Subadvisers out of the fee received by the Adviser from the applicable Subadvised Fund under the applicable Investment Advisory Agreement.

6. Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[7] and (b) a Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants state that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants also state that the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Subadvisory Agreements.

7. Applicants also request an order under section 6(c) of the Act exempting the Subadvised Funds from certain disclosure obligations that may require each Subadvised Fund to disclose fees paid by the Adviser to each Subadviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of a Subadvised Fund's net assets) (a) the aggregate fees paid to the Adviser and any Wholly-Owned Subadvisers; (b) the aggregate fees paid to Non-Affiliated Subadvisers; and (c) the fee paid to each Affiliated Subadviser (collectively, the "Aggregate Fee Disclosure"). An exemption is requested to permit a Subadvised Fund to include only the Aggregate Fee Disclosure. All other items required by Sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

Applicants' Legal Analysis:

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company "except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company." Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the "advisory fee payable" by the investment company, including the total dollar amounts that the investment company "paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years."

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission.

[7] A "Multi-manager Notice" will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Securities Exchange Act of 1934 ("Exchange Act"), and specifically will, among other things: (a) summarize the relevant information regarding the new Subadviser (except as modified to permit Aggregate Fee Disclosure, as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Fund.

A "Multi-manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select a Subadviser who is in the best position to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of a Subadvised Fund are paying the Adviser—the selection, supervision and evaluation of the Subadviser—without incurring unnecessary delays or expenses is appropriate and in the interest of a Subadvised Fund's shareholders and will allow such Subadvised Fund to operate more efficiently. Applicants state that each Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the relevant Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Advisory Agreements.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Subadvisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Subadvisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what a Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. Applicants state that the Adviser may be able to negotiate rates that are below a Subadviser's "posted" amounts if the Adviser is not required to disclose the Subadvisers' fees to the public. Applicants assert that the relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

8. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of a Subadvised Fund in the manner described in the application must be approved by shareholders of the Subadvised Fund before that Subadvised Fund may rely on the requested order. In addition, applicants state that any conflict of interest or economic incentive that may exist in connection with the Adviser selecting a Wholly-Owned Subadviser to manage all or a portion of the assets of a Subadvised Fund are addressed under the terms and conditions of the application and will be disclosed to shareholders and considered by the Board when it reviews the selection or termination of Subadvisers. Applicants also assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested in the application, the operation of the Subadvised Fund in the manner described in the application, including the hiring of Wholly-Owned Subadvisers, will be, or has been, approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Subadvised Fund will hold itself out to the public as employing the multi-manager structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and approval of the Board, will (i) set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a portion of the Subadvised Fund's assets; (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers; (iv) monitor and evaluate the Subadvisers' performance; and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

4. A Subadvised Fund will not make any Ineligible Subadviser Changes without the approval of the shareholders of the applicable Subadvised Fund.

5. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect

the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser or a Wholly-Owned Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser or Wholly-Owned Subadviser derives an inappropriate advantage.

11. No Trustee or officer of a Subadvised Fund or director, or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in the Adviser or any entity, other than a Wholly-Owned Subadviser, that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity, that controls, is controlled by or is under common control with a Subadviser.

12. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

14. Any new Subadvisory Agreement or any amendment to a Subadvised Fund's existing investment advisory agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21365 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72967; File No. SR–NASDAQ–2014–082]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

September 3, 2014.

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 20, 2014 The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to harmonize the process by which it collects information from its equity members and Options Participants for aggregating the activity of affiliated entities for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

Chapter XV Options Pricing

NASDAQ Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV. For purposes of assessing fees and paying rebates, the following references should serve as guidance.

The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term "Common Ownership" shall mean Participants under 75% common ownership or control.

(a) For purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided by NOM depends upon the volume of an Options Participant's activity, an Options Participant may request that NOM aggregate its activity with the activity of its affiliates.

(1) An Options Participant requesting aggregation of affiliate activity shall be required to certify to NOM the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform NOM immediately of any event that causes an entity to cease to be an affiliate. NOM shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. NOM shall approve a request unless it determines that the certification is not accurate.

(2) If two or more Options Participants become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

second day of the month, an approval of the request by NOM shall be deemed to be effective as of the first day of that month. If two or more Options Participants become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by NOM shall be deemed to be effective as of the first day of the next calendar month.

(b) For purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided, by NOM depends upon the volume of an Options Participant's activity, references to an entity (including references to a "Options Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) For purposes of options pricing, the term "affiliate" of an Options Participant shall mean any Options Participant under 75% common ownership or control of that Options Participant.

With respect to Chapter XV, Sections 2(1) and (2) the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NOM Rules at Chapter XV, entitled "Options Pricing," to harmonize the process by which the Exchange will collect information from Options Participants that desire their activity to be aggregated for the purposes of assessing charges or credits with the process currently required for equity members on Nasdaq. The Exchange proposes to adopt the process that is used by equity members today without changing that process. The Exchange believes that this filing is non-controversial because the process, as proposed, will not change. Today, equity and Options Participants may aggregate affiliate activity based on volume of activity for purposes of pricing.[3] The Exchange believes that having the same process for equity members and Options Participants will provide consistency to its processes when aggregating pricing.

Today, a Nasdaq member requesting aggregation of affiliate activity is be required to certify to Nasdaq the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and also is required to inform Nasdaq immediately of any event that causes an entity to cease to be an affiliate. Nasdaq reviews available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. Nasdaq approves a request unless it determines that the certification is not accurate. Further, if two or more members become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by Nasdaq is deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by Nasdaq is deemed to be effective as of the first day of the next calendar month.

The Exchange proposes to amend NOM Rules at Chapter XV to make this language consistent with the requirements that would be applied to NOM Options Participants.

The Exchange believes that harmonizing the process for collecting this information will avoid confusion and simplify information requested of equity members and Options Participants by requesting consistent information.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue an Options Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposal will harmonize the process by which the Exchange collects information from equity members and Options Participants regarding the aggregation of activity of affiliated entities for the purposes of assessing charges or credits.

The Exchange believes that harmonizing this process by which the Exchange collects information related to aggregation for equity members and Options Participants will provide consistency to market participants with respect to meeting the requirements to aggregate on Nasdaq and NOM. Also, the Exchange believes that adopting this method for collecting such information on aggregated pricing, with respect to Options Participants, will ensure proper validation for firms entitled to the aggregation.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the manner in which it collects information related to the aggregation of activity of affiliated entities for the purposes of assessing charges or credits for equity members and Options Participants. The Exchange intends to apply a uniform process to request such aggregation for all NASDAQ members NOM Options Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[3] *See* NASDAQ Rule 7027(a) and NOM Chapter XV.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(6) of Rule 19b-4 thereunder.[7]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-NASDAQ-2014-082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-082 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-21361 Filed 9-8-14; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b-4(f)(6).

[8] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72966; File No. SR-NASDAQ-2014-083]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

September 3, 2014.

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 29, 2014 The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

7027. Aggregation of Activity of Affiliated Members

(a) No Change

(b) No Change

(c) For purposes of this Rule 7027, the term[s set forth below shall have the following meanings:]

[(1) An] "affiliate" of a member shall mean any [wholly owned subsidiary, parent, or sister of the]member *under 75% common ownership or control of* that [is also a]member.

[(2) A "wholly owned subsidiary" shall mean a subsidiary of a member, 100% of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly through other wholly owned subsidiaries.]

[(3) A "parent" shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member.]

[(4) A "sister" shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Nasdaq Rule 7027 to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits by making it consistent with the definition of "Common Ownership" in Chapter XV which relates to options pricing. The aggregation suggested by these rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

impacts the Rule 7000 series where the charge assessed, or credit provided, by Nasdaq depends upon the volume of a member's activity. A member may request that Nasdaq aggregate its activity with the activity of its affiliates.[3] Therefore, for purposes of applying any provision of the Rule 7000 series where the charge assessed, or credit provided, by Nasdaq depends upon the volume of a member's activity, references to an entity (including references to a "member", a "participant", or a "Nasdaq Quoting Market Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.[4]

Currently, Nasdaq Rule 7027 states that for purposes of applying any provision of the Rule 7000 Series where the charge assessed, or credit provided, by Nasdaq depends upon the volume of a member's activity, a member may request that Nasdaq aggregate its activity with the activity of its affiliates.[5] The rule further stipulates that an affiliate is considered to be a wholly-owned subsidiary, parent, or sister of the member where the member holds 100 percent of the voting stock or other comparable ownership interest, either directly or indirectly, in the wholly owned subsidiary, parent, or sister member. The Exchange proposes to amend Rule 7027 to conform that rule to that of the NASDAQ Options Market LLC ("NOM") at Chapter XV so that equities and options members are treated consistently with respect to affiliations of members for purposes of pricing. NOM's Rule provides, "Common Ownership" shall mean Participants under 75 percent common ownership or control.[6] The Exchange desires to take the current standard of 100 percent for equities members and align that standard to the 75 percent standard for Options Participants.

Pursuant to Rule 7027(a)(1), a member requesting aggregation of affiliate activity shall be required to certify to Nasdaq the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform Nasdaq immediately of any event that causes an entity to cease to be an affiliate. Nasdaq shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. Nasdaq shall approve a request unless it determines that the certification is not accurate. Pursuant to Rule 7027(a)(2), if two or more members become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by Nasdaq shall be deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by Nasdaq shall be deemed to be effective as of the first day of the next calendar month.

The Exchange intends to amend the NOM options rules to similarly require the certifications and approvals as noted herein. The Exchange intends that this rule change and the options rule changes noted herein harmonize the process by which the Exchange gathers information related to affiliated members and then in turn, for purposes of pricing, treat both equities and options members alike with respect to the application of aggregated pricing.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue a Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[8] in particular, in that the proposal will harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits with the treatment of the aggregation of activity of affiliated members in relation to options pricing so that more members will be able to benefit from lower charges and/or increased credits. The proposal will further serve to reduce disparity of treatment between members with regards to the pricing of different services and reduce any potential for confusion in how activity can be aggregated. The Exchange believes the rule change avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other members may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons, and those affiliates are not also considered wholly owned affiliates. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed change, such corporate affiliates that cannot be considered wholly owned but are under common control would not receive the same treatment as members who are considered wholly owned affiliates. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory in permitting both wholly owned and common control. In addition to ensuring fair and equal treatment of its members, the Exchange does not want to create incentives for its members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

The Exchange believes that this proposed rule change may enable additional equity members to aggregate pricing because the standard will be reduced from 100 percent to 75 percent for these members. There are no current equity members that would no longer be entitled to the aggregation as a result of this rule change. Further, the Exchange seeks to harmonize the manner in which aggregated pricing is treated on its three markets, NASDAQ, NASDAQ OMX PHLX LLC and NASDAQ OMX BX, Inc. and as between equities and options, by developing one standard for aggregated pricing and one method for collecting such information on aggregated pricing to ensure proper validation of that pricing in the manner in which it is occurring on Nasdaq for equity members today.

Today, BATS Exchange, Inc. ("BATS") equity members are permitted to aggregate share volume calculations for wholly owned affiliates. BATS allows a member to aggregate volume with other members that control, are controlled by, or are under common

[3] *See* Rule 7027(a)(1).

[4] *See* Rule 7027(b).

[5] An "affiliate" of a member shall mean any wholly owned subsidiary, parent, or sister of the member that is also a member. *See* Rule 7027(c)(1). A "wholly owned subsidiary" shall mean a subsidiary of a member, 100 percent of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly through other wholly owned subsidiaries. *See* Rule 7027(c)(2). A "parent" shall mean an entity that directly or indirectly owns 100 percent of the voting stock or comparable ownership interest of a member. *See* Rule 7027(c)(3). A "sister" shall mean an entity, 100 percent of whose voting stock or comparable ownership interest is owned by a parent that also owns 100 percent of the voting stock or comparable ownership interest of a member. *See* Rule 7027(c)(4).

[6] *See* NOM Rules at Chapter XV.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

control with such member.[9] To the extent two or more affiliated companies maintain separate Nasdaq memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, Nasdaq will permit such members to count overall volume of the affiliates in calculating volume. BATS does not specify a specific percentage for such aggregation in its rule. Nasdaq is specifying 75 percent, similar to the percentage applied to Options Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits with those rules contained in Chapter XV which relate to options pricing. The Exchange also believes that certain market participants may be able to aggregate because the standard is decreasing from 100 percent to 75 percent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(6) of Rule 19b-4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-NASDAQ-2014-083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-083 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014-21360 Filed 9-8-14; 8:45 am]

BILLING CODE 8011-01-P

[9] *See* Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2014) [sic] (SR-BATS-2011-012).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b-4(f)(6).

[12] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72960; File No. SR-NYSE-2014-46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Increase Certain Fees for Executions at the Close; Simplify the "Tier Adding Credits" for Non-Floor Brokers and Increase the Credit for One Tier; Decrease the Fee and Increase the Credit for Midpoint Passive Liquidity Orders; Eliminate the Transaction Rate for Floor Broker Volume That "Steps Up" Over a Baseline Month and Increase a Related Fee for Floor Broker Transactions; Eliminate a Volume Tier and Decrease a Credit Related to Executions of Orders Sent to the Floor Broker That Add Liquidity on the Exchange; Increase a Volume Requirement and Corresponding Credit for Supplemental Liquidity Providers When Adding Liquidity in Assigned Securities; and Adjust the Pricing Related to the Retail Liquidity Program Under Rule 107C

September 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on August 20, 2014, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (i) increase certain fees for executions at the close; (ii) simplify the "Tier Adding Credits" for non-Floor brokers and increase the credit for one tier; (iii) decrease the fee and increase the credit for Midpoint Passive Liquidity ("MPL") Orders that remove and provide liquidity, respectively; (iv) increase certain fees for non-Floor broker transactions, including for Designated Market Makers ("DMMs"), that remove liquidity; (v) eliminate the transaction rate for Floor broker volume that "steps up" over a baseline month and increase a related fee for Floor broker transactions that remove liquidity; (vi) eliminate a volume tier and decrease a credit related to executions of orders sent to the Floor broker that add liquidity on the Exchange; (vii) increase a volume requirement and corresponding credit for Supplemental Liquidity Providers ("SLPs") when adding liquidity in assigned securities; and (viii) adjust the pricing related to the Retail Liquidity Program under Rule 107C. The Exchange proposes to implement the fee changes effective September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (i) increase certain fees for executions at the close; (ii) simplify the "Tier Adding Credits" for non-Floor brokers and increase the credit for one tier; (iii) decrease the fee and increase the credit for MPL Orders that remove and provide liquidity, respectively; (iv) increase certain fees for non-Floor broker transactions, including for DMMs, that remove liquidity; (v) eliminate the transaction rate for Floor broker volume that "steps up" over a baseline month and increase a related fee for Floor broker transactions that remove liquidity; (vi) eliminate a volume tier and decrease a credit related to executions of orders sent to the Floor broker that add liquidity on the Exchange; (vii) increase a volume requirement and corresponding credit for SLPs when adding liquidity in assigned securities; and (viii) adjust the pricing related to the Retail Liquidity Program under Rule 107C. The Exchange proposes to implement the fee changes effective September 1, 2014. The proposed changes would only apply to transactions in securities priced $1.00 or more.

Executions at the Close

Other than for market at-the-close ("MOC") and limit at-the-close ("LOC") orders, the Exchange generally does not charge for executions at the close, including Floor broker executions swept into the close. However, the Exchange does charge $0.0002 per share to a member organization that executes an average daily volume ("ADV") on the Exchange during the billing month of at least 1,000,000 shares in (i) executions at the close (except MOC and LOC orders), and/or (ii) Floor broker executions swept into the close. The Exchange proposes to increase this fee to $0.0003 per share.

The Exchange currently charges $0.00095 per share for all MOC and LOC orders, except for those of certain member organizations that are particularly active with MOC and LOC orders and other executions at the close. Specifically, the Exchange currently charges $0.00055 per share for all MOC and LOC orders from any member organization executing (i) an ADV of MOC/LOC activity on the Exchange in the month of at least 0.375% of consolidated ADV ("CADV") in NYSE-listed securities during the billing month ("NYSE CADV"); or (ii) an ADV of MOC/LOC activity on the Exchange in that month of at least 0.30% of NYSE CADV plus an ADV of total close activity (i.e., MOC/LOC and other executions at the close) on the Exchange in that month of at least 0.475% of NYSE CADV. The Exchange proposes to increase this fee to $0.00065 per share.

The Exchange also currently charges $0.00050 per share for all MOC and LOC orders from any member organization executing an ADV of MOC/LOC activity on the Exchange in the month of at least 0.575% of NYSE CADV. The Exchange proposes to increase this fee to $0.00060 per share.

MPL Orders

An MPL Order is an undisplayed limit order that automatically executes at the mid-point of the best protected bid ("PBB") or best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO").[4] The Exchange currently charges a fee of $0.0026 per share for executions of MPL Orders that remove liquidity and provides a credit of $0.0015 per share for executions of MPL Orders that provide liquidity. The Exchange proposes to decrease the MPL Order fee to $0.0025 per share for executions of MPL Orders that remove liquidity and to increase the MPL Order credit to $0.0020 per share for executions of MPL Orders that provide liquidity.

Non-Floor Broker Transactions (Including DMMs)

The Exchange currently charges $0.0026 per share for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs. The Exchange proposes to increase this fee to $0.0027 per share (except for MPL Orders, as described above).

The Exchange currently provides member organizations with credits of $0.0022, $0.0020, or $0.0017 per share under the Tier 1, Tier 2, and Tier 3 Adding Credits, respectively, when adding liquidity on the Exchange, except that the credit is $0.0010 for a Non-Displayed Reserve Order or $0.0015 for an MPL Order under these tiers. Member organizations must satisfy various requirements related to, for example, "Adding ADV" and MOC and LOC activity in order to qualify for the Tier 1, Tier 2, and Tier 3 Adding Credits (collectively, "Tier Adding Credits").[5]

[4] *See* Rule 13. *See also* 17 CFR 242.600(b)(57).

[5] To qualify for the Tier 1 Adding Credit, (i) a member organization must have an ADV of executions that add liquidity in customer electronic orders to the Exchange ("Customer Electronic Adding ADV," which excludes any liquidity added by a Floor broker, DMM, or SLP) during the billing month that is at least 1.25% of NYSE CADV, and must execute MOC and LOC orders of at least 0.12% of NYSE CADV; or (ii) the member organization must have Customer Electronic Adding ADV during the billing month that is at least 0.85% of NYSE CADV, must execute MOC and LOC orders of at least 0.12% of NYSE CADV, and must either (a) add liquidity to the Exchange as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP proprietary trading unit ("SLP-Prop") and an SLP market maker ("SLMM") of the same member organization) of more than 0.30% of NYSE CADV or (b) add liquidity to the Exchange as a Floor broker of more than 0.30% of NYSE CADV. To qualify for the Tier 2 Adding Credit, (i) a member organization must

The Exchange proposes to simplify and streamline the qualification requirements related to the Tier Adding Credits, as follows:

• The Tier 1 Adding Credit would apply to a member organization that (i) has ADV that adds liquidity to the Exchange during the billing month ("Adding ADV," which would exclude any liquidity added by a DMM) that is at least 1.10% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.12% of NYSE CADV. Instead of two methods of qualifying for the Tier 1 Adding Credit, only the first existing method would remain—the second method, which applied three sets of criteria, would be eliminated. The concept of "Customer Electronic Adding ADV" would be replaced with only the simpler existing concept of "Adding ADV," which would continue to exclude DMM volume, but which would include SLP and Floor broker volume. The applicable threshold of required Adding ADV would be lowered, from 1.25% to 1.10% of NYSE CADV. The applicable MOC/LOC threshold would not change.

• The Tier 2 Adding Credit would apply to a member organization that (i) has Adding ADV of at least 0.75% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.10% of NYSE CADV or executes an ADV during the billing month of at least one million shares in Retail Price Improvements Orders ("RPIs," which are discussed in greater detail below under "Retail Liquidity Program"). Instead of three methods of qualifying for the Tier 2 Adding Credit, only the second existing method would remain—the first and third methods would be eliminated. The applicable threshold of required Adding ADV would be lowered, from 0.80% to 0.75% of NYSE CADV. The applicable threshold of required MOC/LOC activity would also be lowered, from 0.12% to 0.10% of NYSE CADV. The existing optional threshold related to adding liquidity as an SLP in assigned securities also would be eliminated.

• The Tier 3 Adding Credit is already fairly straightforward in terms of qualification requirements, and would apply to a member organization that (i) has Adding ADV of at least 0.35% of NYSE CADV, and (ii) executes MOC and LOC orders of at least 0.05% of NYSE CADV. The applicable threshold of required Adding ADV would be raised, from 0.20% to 0.35% of NYSE CADV. The applicable threshold of required MOC/LOC activity would be lowered, from 0.10% to 0.05% of NYSE CADV.

The Exchange proposes increase the credit for the Tier 3 Adding Credit from $0.0017 to $0.0018 per share; the Tier 1 and Tier 2 Adding Credits ($0.0022 and $0.0020 per share, respectively) would not change.

Floor Broker Transactions

The Exchange currently charges $0.0005 or $0.0015 per share for certain Floor broker Discretionary e-Quotes ("d-Quotes") that remove liquidity. The Exchange charges $0.0023 per share (or $0.0026 if an MPL Order) for all other Floor broker transactions that remove liquidity from the Exchange, unless the member organization executes an ADV in Floor broker transactions in the month that is at least 10% more than its May 2013 ADV for Floor broker transactions, in which case the charge is $0.0021 per share (or $0.0026 if an MPL Order). The Exchange proposes to eliminate the rate related to Floor broker ADV that "steps up" over its May 2013 ADV. The Exchange also proposes to increase the $0.0023 per share fee (or $0.0026 if an MPL Order) for Floor broker transactions that take liquidity from the Exchange, to $0.0024 per share (or $0.0025 if an MPL Order, as proposed above).

The Exchange currently provides a per share credit for executions of orders sent to a Floor broker for representation on the Exchange when adding liquidity to the Exchange if the member organization has an ADV that adds liquidity to the Exchange by a Floor broker during the billing month that is at least equal to certain thresholds. The Exchange proposes to increase the first threshold of 2,000,000 shares ADV to 2,500,000 shares ADV in order to qualify for the existing credit of $0.0020 per share (or $0.0020 if an MPL Order, as proposed above). The Exchange proposes to eliminate the second threshold of 4,000,000 shares ADV and the corresponding credit of $0.0021. The Exchange proposes to decrease the third threshold of 14,000,000 shares ADV to 12,000,000 shares ADV and decrease the corresponding credit of $0.0023 per share to $0.0022 (or $0.0020 if an MPL Order, as proposed above).

SLP Transactions

The Exchange currently provides a per share credit to SLPs of $0.0025 per share (or $0.0020 if a Non-Displayed Reserve Order or $0.0015 if an MPL Order) when adding liquidity to the Exchange if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to NYSE Rule 107B and (ii) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.30% of NYSE CADV. The Exchange proposes to increase the latter threshold from 0.30% to 0.35% and to increase the corresponding credit from $0.0025 to $0.0026. The Exchange also proposes to similarly increase the rate for Non-Displayed Reserve Orders by $0.0001, from $0.0020 to $0.0021. The MPL Order rate would increase to $0.0020, as proposed above.

Retail Liquidity Program

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.[6] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a "Retail Order," which is defined in Rule 107C(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[7] In addition to RMOs, Retail Liquidity Providers ("RLPs") were created as an additional class of market participant

have Customer Electronic Adding ADV that is at least 1.1% of NYSE CADV, and must execute MOC and LOC orders of at least 0.375% of NYSE CADV; (ii) the member organization (a) must have ADV that adds liquidity to the Exchange during the billing month ("Adding ADV," which excludes any liquidity added by a DMM) that is at least 0.8% of NYSE CADV, (b) must execute MOC and LOC orders of at least 0.12% of NYSE CADV or execute an ADV during the billing month of at least one million shares in RPIs (as defined below related to the Retail Liquidity Program), and (c) must add liquidity to the Exchange as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP Prop and SLMM of the same member organization) of more than 0.15% of NYSE CADV; or (iii) the member organization must have Customer Electronic Adding ADV during the billing month that is at least 0.5% of NYSE CADV, must execute MOC and LOC orders of at least 0.12% of NYSE CADV, and must have Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization's Customer Electronic Adding ADV during September 2012 as a percentage of NYSE CADV during September 2012 plus 15%.

To qualify for the Tier 3 Adding Credit, a member organization must have Adding ADV that is at least 0.20% of NYSE CADV and must execute MOC and LOC orders of at least 0.10% of NYSE CADV.

[6] See Rule 107C. *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55). The Exchange also proposes a non-substantive change to correct a typographical error in references to Rule 107C in the Price List.

[7] RMO is defined in Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C to submit Retail Orders.

under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of "RPIs," which are non-displayed interest that is better than the PBBO.[8] Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders are not currently charged or provided with a credit (i.e., they are free) if the RLP satisfies the applicable percentage requirement of Rule 107C. The Exchange proposes to instead provide a credit of $0.0003 per share. RPIs of an RLP that does not satisfy the applicable percentage requirement of Rule 107C would remain subject to the existing fee of $0.0003 per share.

A fee of $0.0003 per share also currently applies to non-RLP member organization executions of RPIs against Retail Orders, unless the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs, in which case no charge or credit applies (i.e., the execution is free). The Exchange proposes to instead provide a credit of $0.0003 per share to such RPI executions if the non-RLP member organization satisfies the 500,000 ADV threshold.

RMOs currently receive a credit of $0.0005 per share for executions of Retail Orders if executed against RPIs or MPL Orders.[9] The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (i.e., no credit or charge).[10]

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Executions at the Close

The Exchange believes that the proposed fee increases for certain executions at the close are reasonable. The Exchange's closing auction is a recognized industry benchmark,[13] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

The Exchange believes that it is equitable and not unfairly discriminatory to increase fees for executions at the close (other than MOC and LOC orders) and Floor broker executions swept into the close for a member organization that executes an ADV of at least 1,000,000 of such executions on a combined basis because member organizations that reach this ADV threshold are generally larger member organizations that are deriving a substantial benefit from this high volume of closing executions. Nonetheless, the Exchange must continue to encourage liquidity from multiple sources. Allowing member organizations with execution volumes below 1,000,000 shares to continue to obtain executions at the close at no charge encourages them to continue to send orders to the Exchange for the closing auction. The Exchange believes that its proposal would equitably balance these interests and continue to encourage order flow from multiple sources, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants.

With respect to the increased fees for member organizations that execute higher volumes of MOC and LOC orders and other activity at the close, the Exchange believes that the proposed rates are reasonable because they are still below the $0.00095 rate that would otherwise apply to MOC and LOC orders. As such, the Exchange believes that the fees would continue to encourage member organizations to provide higher volumes of MOC and LOC orders and other close activity, which contributes to the quality of the Exchange's closing auction and provides market participants with a greater opportunity for execution as a result of such increased activity. In this regard, the Exchange continues to believe that it is equitable and not unfairly discriminatory to charge a lower fee to member organizations that make significant contributions to market quality by providing higher volumes of liquidity, especially at the close, which benefits all market participants.

The Exchange also believes that the proposed increases to these particular fees for closing executions are reasonable because certain other changes to transaction rates proposed herein may offset these increases (e.g., an increased Tier 3 Adding Credit, lower qualification thresholds for the Tier 1 and Tier 2 Adding Credits, and lower (higher) fees (credits) for removing (adding) liquidity with MPL Orders). The proposed rates are also reasonable, in that they are consistent with, and in some cases lower than, applicable closing rates on the NASDAQ Stock Market, LLC ("NASDAQ").[14] For example, the default fee for executions in NASDAQ's "Closing Cross" is $0.0003 per share, which is identical to the rate proposed herein. Regarding MOC and LOC orders, the default fee for executions in NASDAQ's Closing Cross is $0.0015 per share, which is higher than the default rate of $0.00095 on the Exchange. The lowest MOC/LOC fee on NASDAQ is $0.0008 per share, which, again, is higher than the both the $0.00060 and $0.00065 rates proposed herein. This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds, where applicable.

MPL Orders

The Exchange introduced the MPL Order and related fees and credits in January 2014.[15] The Exchange increased the MPL Order fee by $0.0001 for executions of MPL Orders that remove liquidity, to the current rate of $0.0026 per share, shortly thereafter, in March 2014, but maintained the original credit rate of $0.0015 per share for executions of MPL Orders that provide liquidity that currently exists in the Price List.[16] After several months of member organization activity using MPL Orders, the Exchange now believes that a decrease to the applicable fee and

[8] RLP is defined in Rule 107C(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C. RPI is defined in Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the PBBO by at least $0.001 and that is identified as such.

[9] Retail Orders are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.

[10] The Exchange would continue to charge an RMO according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[14] *See, e.g.*, NASDAQ Rule 7018(d).

[15] *See* Securities Exchange Act Release No. 71452 (January 31, 2014), 79 FR 7267 (February 6, 2014) (SR–NYSE–2014–05).

[16] *See* Securities Exchange Act Release No. 71684 (March 11, 2014), 79 FR 14758 (March 17, 2014) (SR–NYSE–2014–09).

increase to the applicable credit are reasonable. These changes should encourage additional utilization of MPL Orders on the Exchange. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants.

MPL Orders are not be [sic] eligible for any tiered or additional credits or reduced fees, even if the MPL Orders contribute to a member organization qualifying for such pricing. The Exchange therefore also believes that the proposed pricing is reasonable because, even though the $0.0025 fee would be lower than the $0.0027 fee proposed for other non-Floor broker executions that remove liquidity, the fee for MPL Order executions of a member organization that removes liquidity would remain constant, even if a member organization qualifies for tiered or volume-based pricing.

The resulting fee also is reasonable because it would be lower than the rates on NASDAQ.[17] For example, NASDAQ charges $0.0027 per share to execute against resting midpoint liquidity, which is greater than both the existing $0.0026 per share rate and the proposed $0.0025 per share rate that would apply to MPL Orders. The resulting credit is reasonable because it would be within the range of credits that are available on NASDAQ for midpoint liquidity—currently between $0.0014 and $0.0020 per share.

The proposed change is equitable and not unfairly discriminatory because MPL Orders increase the quality of order execution on the Exchange's market, which benefits all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because all market participants—customers, Floor brokers, DMMs, and SLPs—may use MPL Orders on the Exchange and because all market participants that use MPL Orders would be subject to the same fee or credit, as is currently the case.

Non-Floor Broker Transactions (Including DMMs)

The Exchange believes that the proposed fee increase for non-Floor broker transactions that remove liquidity is reasonable because non-Floor brokers would continue to receive credits for their transactions that provide liquidity on the Exchange, including (i) for member organizations that add liquidity that satisfies certain thresholds under the Tier Adding Credits, (ii) for DMMs under the DMM credits, and (iii) for MPL Orders under various pricing categories in the Price List. In this regard, the changes proposed to the Tier Adding Credits would result in lower qualification thresholds for the Tier 1 and Tier 2 Adding Credits and would result in both higher and lower qualification thresholds for the Tier 3 Adding Credit, with a higher corresponding Tier 3 Adding Credit rate. The resulting fee also is reasonable because it would continue to be consistent with, and in some cases lower than, the applicable rate on NASDAQ.[18] For example, the standard fee for removing liquidity from NASDAQ in both NASDAQ-listed and NYSE-listed securities is $0.0030 per share, which is higher than the $0.0027 per share proposed herein.

The proposed changes to the qualifications for the Tier Adding Credits are reasonable because they would simplify the applicable requirements. Member organizations could more easily track whether their activity will satisfy the applicable thresholds. With respect to the Tier 1 and 2 Adding Credits, the applicable thresholds would be decreased, which is reasonable because it would encourage member organizations to add liquidity to the Exchange at levels that would qualify the member organization for the corresponding credits (i.e., $0.0022 or $0.0020 per share, respectively). The Exchange believes that maintaining the RPI method of qualifying, as an alternative to MOC/LOC activity, is reasonable because it would continue to provide member organizations with an alternative way in which to qualify for the credit, thereby encouraging member organizations to provide higher volumes of RPIs, which will continue to contribute to the quality of the Exchange's market, particularly for retail investors, by way of additional price-improved interest on the Exchange available for execution. Regarding the Tier 3 Adding Credit, the applicable Adding ADV threshold would increase, while the MOC/LOC threshold would decrease. On balance, the Exchange believes that qualification requirements for the Tier 3 Adding Credit are reasonable in light of the proposed increase to the corresponding credit (i.e., from $0.0017 to $0.0018 per share). Continuing to exclude DMM volume from Adding ADV, but including SLP and Floor broker volume, is reasonable because it would contribute further to member organizations qualifying for the Tier Adding Credits. This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds.

Floor Broker Transactions

The Exchange believes that it is reasonable to eliminate the rate related to Floor broker ADV that "steps up" over its May 2013 ADV because member organizations have not increased their activity to qualify for this rate as significantly as the Exchange anticipated they would. The Exchange believes that this is equitable and not unfairly discriminatory because the rate would be eliminated entirely and because member organizations would remain able to qualify for other existing pricing in the Price List. This aspect of the proposed change would therefore result in a more streamlined Price List.

The Exchange believes that the changes proposed to the tiered credits for executions of orders sent to a Floor broker for representation on the Exchange are reasonable because they would encourage additional displayed liquidity on the Exchange. This would also encourage the execution of such transactions on a public exchange, thereby promoting price discovery and transparency. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they would continue to encourage member organizations to send orders to the Floor for execution, thereby contributing to robust levels of liquidity on the Floor, which benefits all market participants. This is equitable and not unfairly discriminatory because those member organizations that make significant contributions to market quality and that contribute to price discovery by providing higher volumes of liquidity would continue to be allocated a higher credit.

The Exchange believes that any member organizations that may currently be qualifying under the existing thresholds could qualify for the remaining two thresholds based on the levels of activity sent to Floor brokers. Moreover, the qualification requirement for the highest credit would be lowered, and the resulting lower credit would reflect the lower qualification requirement. The Exchange introduced these Floor broker tiered credits in early

[17] *See supra* note 14.

[18] *Id.*

2014.[19] The Exchange now believes that elimination of the current 4,000,000 share ADV tier would encourage higher levels of activity in order to qualify for the credit of $0.0022 per share (i.e., by satisfying the 12,000,000 share ADV threshold). This aspect of the proposed change also is equitable and not unfairly discriminatory because all similarly situated member organizations would pay the same rate, as is currently the case, and because all member organizations would be eligible to qualify for the rate by satisfying the related thresholds.

The Exchange believes that it is reasonable to increase the fee, from $0.0023 to $0.0024 per share, for Floor broker transactions that remove liquidity from the Exchange because the proposed new rate is designed to strike a balance between the fees and credits offered by the Exchange for removing and providing liquidity, respectively. In this regard, despite the increase in this fee, member organizations would be eligible to qualify for the proposed Floor broker adding credit of $0.0022 by satisfying the 12,000,000 share ADV threshold described above, which is 2,000,000 million shares less than the current threshold. This proposed rate of $0.0024 per share would also continue to be set at a level that is below the rate for transactions of non-Floor brokers that remove liquidity (i.e., $0.0027 per share, as described above), which is reasonable because it would encourage member organizations to continue to send orders to the Floor for execution.

SLP Transactions

The Exchange believes that the proposed change related to SLP transactions is reasonable because it would require that an SLP add a greater amount of liquidity in its assigned securities, but qualifying SLPs would also receive a higher credit for these transactions. This would create an added incentive for SLPs to provide liquidity in assigned securities. This is reasonable because the added incentive created by the availability of the higher credit is reasonably related to an SLP's liquidity obligations on the Exchange and the value to the Exchange's market quality associated with higher volumes. The corresponding $0.0001 increase in the credit applicable to Non-Displayed Reserve Orders, from $0.0020 to $0.0021, also is reasonable because it would maintain the existing $0.0005 difference between these order types and the otherwise applicable SLP credit (excluding MPL orders). The proposed changes also are equitable and not unfairly discriminatory because all similarly situated SLPs would pay the same rate, as is currently the case, and because all such member organizations would be eligible to qualify for the rate by satisfying the related thresholds, where applicable.

Retail Liquidity Program

The Exchange believes that the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately two years ago.[20] At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of $0.0003 per share for RLP executions of RPIs against Retail Orders if the RLP satisfies the applicable percentage requirement of Rule 107C is reasonable because it would further incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Providing a credit of $0.0003 per share for non-RLP member organization executions of RPIs against Retail Orders if the non-RLP member organization executes an ADV during the month of at least 500,000 shares of RPIs also is reasonable because it would incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.

The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of the Retail Liquidity Program. Despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs. Additionally, Retail Order executions are always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.[21] Orders that remove liquidity are generally charged a fee according to the Price List, but Retail Orders would continue to be subject to alternative pricing (i.e., no charge rather than a fee) that would continue to contribute to maintaining or increasing the proportion of retail flow in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[22] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RMOs and non-RMO member organizations being available for interaction with the Retail Orders. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly

[19] *See supra* note 16.

[20] *See* Securities Exchange Act Release No. 67529 (July 27, 2012), 77 FR 46137 (August 2, 2012) (SR–NYSE–2012–30).

[21] A Retail Order is an Immediate or Cancel Order. *See* Rule 107C(a)(3). *See also* Rule 107C(k) for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

[22] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) ("Concept Release") (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's Web site) ("White Speech"); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site) ("Schapiro Speech"). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in "dark" venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[24] of the Act and subparagraph (f)(2) of Rule 19b–4[25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)–[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2014–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–46 and should be submitted on or before September 30, 2014.

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21355 Filed 9–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72972; File No. SR–NYSEMKT–2014–71]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and, through NYSE Amex Options LLC Amending the NYSE Amex Options Fee Schedule To Establish Billing Practices with Respect to Billing Disputes

September 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 21, 2014, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and, through NYSE Amex Options LLC ("NYSE Amex Options"), to amend the NYSE Amex Options Fee Schedule ("Fee Schedule" and, together with the Price List, "Fee Schedules"), to establish a billing practice with respect to billing disputes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules to establish a billing practice to prevent members[4] from contesting their bills long after they have been sent an invoice. In accordance with the proposed rule change, members must submit all disputes no later than sixty calendar days after receipt of an Exchange invoice. After sixty calendar days, all fees assessed by the Exchange will be considered final. The Exchange provides members with both daily and monthly fee reports and thus believes members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that members dispute an invoice within this time period will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice, is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable because it applies equally to all members. The proposed provision regarding fee disputes in the Fee Schedules promotes the protection of investors and the public interest by providing a clear and concise mechanism in Exchange Rules for members to dispute fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 60-day limitation is fair and equitable because it will be implemented prospectively on all members, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which applies equally to all members, is intended to reduce the Exchange's administrative burden, and is substantially similar to rules adopted by other exchanges. Because the Exchange does not propose any substantive changes regarding fees applicable to members, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For the purposes of this filing, for NYSE MKT Equities, the term "members" refers to "member organization" as defined in Rule 2(b)—Equities, and for NYSE Amex Options, the term "members" refers to "ATP Holder" as defined in Rule 900.2NY(5).

[10] *See supra* note 5.

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–71, and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014–21390 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72964; File No. SR–BX–2014–041]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

September 3, 2014.

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 21, 2014, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

7027. Aggregation of Activity of Affiliated Members

(a) No Change

(b) No Change

(c) For purposes of this Rule 7027, the term[s set forth below shall have the following meanings:]

[(1) An] "affiliate" of a member shall mean any [wholly owned subsidiary, parent, or sister of the]member *under 75% common ownership or control of* that [is also a]member.

[(2) A "wholly owned subsidiary" shall mean a subsidiary of a member, 100% of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly through other wholly owned subsidiaries.]

[(3) A "parent" shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member.]

[(4) A "sister" shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend BX Rule 7027 to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits by making it consistent with the definition of "Common Ownership" in Chapter XV which relates to options pricing. The aggregation suggested by these rules impacts the Rule 7000 series where the charge assessed, or credit provided, by BX depends upon the volume of a member's activity. A member may request that BX aggregate its activity with the activity of its affiliates.[3] Therefore, for purposes of applying any provision of the Rule 7000 series where the charge assessed, or credit provided, by BX depends upon the volume of a member's activity, references to an entity (including references to a "member", a "participant", or a "BX Quoting Market Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.[4]

Currently, BX Rule 7027 states that for purposes of applying any provision of the Rule 7000 Series where the charge assessed, or credit provided, by BX depends upon the volume of a member's activity, a member may request that BX aggregate its activity with the activity of its affiliates.[5] The rule further stipulates that an affiliate is considered to be a wholly-owned subsidiary, parent, or sister of the member where the member holds 100 percent of the voting stock or other comparable ownership interest, either directly or indirectly, in the wholly owned subsidiary, parent, or sister member.

The Exchange proposes to amend Rule 7027 to conform that rule to that of BX Options at Chapter XV so that equities and options members are treated consistently with respect to affiliations of members for purposes of pricing. BX's Options Rule provides, "Common Ownership" shall mean Participants under 75 percent common ownership or control.[6] The Exchange desires to take the current standard of 100 percent for equities members and align that standard to the 75 percent standard for Options Participants.

Pursuant to Rule 7027(a)(1), a member requesting aggregation of affiliate activity shall be required to certify to BX the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform BX immediately of any event that causes an entity to cease to be an affiliate. BX shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. BX shall approve a request unless it determines that the certification is not accurate. Pursuant to Rule 7027(a)(2), if two or more members become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by BX shall be deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by BX shall be deemed to be effective as of the first day of the next calendar month. The Exchange intends to amend the BX options rules to similarly require the certifications and approvals as noted herein. The Exchange intends that this rule change and the options rule changes noted herein harmonize the process by which the Exchange gathers information related to affiliated members and then in turn, for purposes of pricing, treat both equities and options members alike with respect to the application of aggregated pricing.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue a Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposal will harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits with the treatment of the aggregation of activity of affiliated members in relation to options pricing so that more members will be able to benefit from lower charges and/or increased credits. The proposal will further serve to reduce disparity of treatment between members with regards to the pricing of different services and reduce any potential for confusion in how activity can be aggregated. The Exchange believes the rule change avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other members may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons, and those affiliates are not also considered wholly owned affiliates. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed change, such corporate affiliates that cannot be considered wholly owned but are under common control would not receive the same treatment as members who are considered wholly owned affiliates. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory in permitting both wholly owned and common control. In addition to ensuring fair and equal treatment of its members, the Exchange does not want to create incentives for its members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

The Exchange believes that this proposed rule change may enable additional equity members to aggregate pricing because the standard will be reduced from 100 percent to 75 percent for these members. There are no current equity members that would no longer be entitled to the aggregation as a result of this rule change. Further, the Exchange seeks to harmonize the manner in which aggregated pricing is treated on its three markets, The NASDAQ Stock Market

[3] *See* Rule 7027(a)(1).

[4] *See* Rule 7027(b).

[5] An "affiliate" of a member shall mean any wholly owned subsidiary, parent, or sister of the member that is also a member. *See* Rule 7027(c)(1). A "wholly owned subsidiary" shall mean a subsidiary of a member, 100 percent of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly through other wholly owned subsidiaries. *See* Rule 7027(c)(2). A "parent" shall mean an entity that directly or indirectly owns 100 percent of the voting stock or comparable ownership interest of a member. *See* Rule 7027(c)(3). A "sister" shall mean an entity, 100 percent of whose voting stock or comparable ownership interest is owned by a parent that also owns 100 percent of the voting stock or comparable ownership interest of a member. *See* Rule 7027(c)(4).

[6] *See* BX Options Rules at Chapter XV.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

LLC, NASDAQ OMX PHLX LLC and BX and as between equities and options, by developing one standard for aggregated pricing and one method for collecting such information on aggregated pricing to ensure proper validation of that pricing in the manner in which it is occurring on BX for equity members today.

Today, BATS Exchange, Inc. ("BATS") equity members are permitted to aggregate share volume calculations for wholly owned affiliates. The Exchange [sic] allows a member to aggregate volume with other members that control, are controlled by, or are under common control with such member.[9] To the extent two or more affiliated companies maintain separate Exchange memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such members to count overall volume of the affiliates in calculating volume. BATS does not specify a specific percentage for such aggregation. The Exchange is specifying 75 percent, similar to the percentage applied to Options Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the treatment of the aggregation of activity of affiliated members for the purposes of assessing charges or credits with those rules contained in Chapter XV which relate to options pricing. The Exchange also believes that certain market participants may be able to aggregate because the standard is decreasing from 100 percent to 75 percent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate., it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2014–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–BX–2014–041 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21358 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2014) [sic] (SR–BATS–2011–012).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72969; File No. SR–Phlx–2014–56]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Collection of Information Related to Aggregation of Activity of Affiliates

September 3, 2014.

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 20, 2014, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to harmonize the process by which it collects and aggregates information from its equity and option members and member organizations for the purposes of assessing charges or credits for options and equities trading.

The Exchange requests that this filing become operative on December 1, 2014.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

NASDAQ OMX PHLX LLC [1] PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO–LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

[1] PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

* * * * *

PREFACE

For purposes of assessing *options* fees *and paying rebates,* the following references should serve as guidance.

The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).[2]

The term "Specialist" applies to transactions for the account of a Specialist [3] (as defined in Exchange Rule 1020(a)).

The term "ROT, SQT and RSQT" applies to transactions for the accounts of Registered Option Traders [4] ("ROTs"), Streaming Quote Traders ("SQTs"),[5] and Remote Streaming Quote Traders ("RSQTs").[6] For purposes of the Pricing Schedule, the term "Market Maker" will be utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs.

The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term "Professional" applies to transactions for the accounts of Professionals (as defined in Exchange Rule 1000(b)(14)).

The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term "Joint Back Office" or "JBO" [7] applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014.

The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control.

For Purposes of Common Ownership Aggregation of Activity of Affiliated Members and Member Organizations

(a) For purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided by the Exchange depends upon the volume of a member or member organization's activity, a member or member organization may request that the Exchange aggregate its activity with the activity of its affiliates.

(1) A member or member organization requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. The Exchange shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. The Exchange shall approve a request unless it determines that the certification is not accurate.

(2) If two or more members or member organizations become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more members or member organizations become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month.

(b) For purposes of applying any option transaction fee or rebate where the fee assessed, or rebate provided by the Exchange depends upon the volume of a member or member organization's activity, references to an entity (including references to a "member" or "member organization") shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) For purposes of this provision, the term "affiliate" of a member or member organization shall mean any member or member organization under 75% common ownership or control of that member or member organization.

* * * * *

VIII. NASDAQ OMX PSX FEES

* * * * *

Aggregation of Activity of Affiliated Member Organizations

(a) For purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by the Exchange depends upon the volume of a member organization's activity, a member organization may request that the Exchange aggregate its activity with the activity of its affiliates.

(1) A member organization requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. [In addition, the Exchange reserves the right to request information to verify the affiliate status of an entity.] *The Exchange shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. The Exchange shall approve a request unless it determines that the certification is not accurate.*

(2) *If two or more member organizations become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month.*

(b) No Change.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend both the Preface of the Pricing Schedule, which applies to options, and Chapter VIII of the Pricing Schedule, which applies to equities, to harmonize the process by which the Exchange will collect information from members and member organizations that desire their activity to be aggregated for the purposes of assessing charges or credits. Today, equity and options members may aggregate affiliate activity based on volume of activity for purposes of pricing, but at different percentages (100 percent vs. 75 percent).[3] The Exchange believes that having the same process for equity and options members will provide consistency to its processes when aggregating pricing.

Today, a PSX member organization requesting aggregation of affiliate activity is required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, the Exchange reserves the right to request information to verify the affiliate status of an entity.

The Exchange proposes to make this language consistent with the requirements of The NASDAQ Stock Market LLC ("NASDAQ") and NASDAQ OMX BX, Inc. ("BX")[4] by further stating that it will approve a request unless it determines that the certification is not accurate. Also, the Exchange proposes to adopt the following NASDAQ and BX equity process for determining the effective date for aggregation: "If two or more member organizations become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the Exchange shall be deemed to be effective as of the first day of the next calendar month."

The Exchange also proposes to add the same process that would exist for PSX members to the process that would be required for option members by also adding the same language, as specified above, to the Preface of the Pricing Schedule, which applies to options pricing. The Exchange believes that harmonizing the process for collecting this information will avoid confusion and simplify information requested of equity and options members by requesting consistent information.

Finally, the Exchange proposes to add language to clarify that the defined terms in the Preface of the Pricing Schedule apply to options pricing, fees and rebates.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue an Options Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposal will harmonize the process by which the Exchange collects information from equity and options members and member organizations regarding the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits.

The Exchange believes that harmonizing this process by which the Exchange collects information related to aggregation for equity and options members to the process in place at NASDAQ and BX[7] will provide consistency to market participants with respect to meeting the requirements to aggregate on NASDAQ, BX or Phlx. Also, the Exchange believes that adopting this method for collecting such information on aggregated pricing will ensure proper validation for firms entitled to the aggregation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the manner in which it collects information related to the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits for equity and options members. The Exchange intends to apply a uniform process to request such aggregation for all Phlx members and member organizations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File

[3] *See* Preface of the Pricing Schedule, which applies to options, and Chapter VIII of the Pricing Schedule, which applies to equities.

[4] *See* NASDAQ and BX Rules 7027(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* note 4.

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(6).

Number SR–Phlx–2014–56 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–56 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014–21363 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72971; File No. SR–NYSEARCA–2014–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and, Through Its Wholly Owned Subsidiary NYSE Arca Equities, Inc. Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services, To Establish a Billing Practice With Respect to Billing Disputes

September 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 28, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Equities Fee Schedule" and, together with the Options Fee Schedule, "Fee Schedules"), to establish a billing practice with respect to billing disputes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules to establish a billing practice to prevent members[4] from contesting their bills long after they have been sent an invoice. In accordance with the proposed rule change, members must submit all disputes no later than sixty calendar days after receipt of an Exchange invoice. After sixty calendar days, all fees assessed by the Exchange will be considered final. The Exchange provides members with both daily and monthly fee reports and thus believes members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that members dispute an invoice within this time period will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges.[5]

The Exchange also proposes to state that all billing disputes must be submitted to the Exchange in writing,[6] and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S. C. 78a.

[3] 17 CFR 240.19b–4.

[4] For the purposes of this filing, for NYSE Arca Equities, the term "members" refers to "ETP Holders" as defined in NYSE Arca Equities Rule 1.1(n), and for NYSE Arca, the term "members" refers to "OTP Holders" and "OTP Firms" as defined in NYSE Arca Rules 1.1(q) and 1.1(r).

[5] *See* Securities Exchange Act Release No. 72410 (June 17, 2014), 79 FR 35605 (June 23, 2014) (SR–MIAX–2014–27); Securities Exchange Act Release No. 71286 [sic] (January 14, 2014), 79 FR 3442 (January 21, 2014) (SR–ISE–2014–02); Securities Exchange Act Release No. 62661 (August 6, 2010), 75 FR 49544 (August 13, 2010) (SR-Phlx-2010–110).

[6] The Exchange invoice specifies contact information for billing inquiries.

exchanges,[7] will further streamline the billing dispute process.

In addition, in order for members to be fully aware of this rule regarding fee disputes, the Exchange proposes to include it on the Fee Schedules and at the bottom of each invoice regarding the handling of billing disputes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice, is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable because it applies equally to all members. The proposed provision regarding fee disputes in the Fee Schedules promotes the protection of investors and the public interest by providing a clear and concise mechanism in Exchange Rules for members to dispute fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 60-day limitation is fair and equitable because it will be implemented prospectively on all members, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which applies equally to all members, is intended to reduce the Exchange's administrative burden, and is substantially similar to rules adopted by other exchanges. Because the Exchange does not propose any substantive changes regarding fees applicable to members, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2014–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S. C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–92, and should be submitted on or before September 30, 2014.

[7] *See supra* note 5.
[8] 15 U.S. C. 78f(b).
[9] 15 U.S. C. 78f(b)(4) and (5).
[10] *See supra* note 4.
[11] 15 U.S. C. 78f(b)(8).
[12] 15 U.S. C. 78s(b)(3)(A)(iii).
[13] 17 CFR 240.19b–4(f)(6).
[14] 17 CFR 240.19b–4(f)(6).
[15] 17 CFR 240.19b–4(f)(6)(iii).
[16] 15 U.S. C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014–21389 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72965; File No. SR–BX–2014–039]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

September 3, 2014.

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 20, 2014, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to harmonize the process by which it collects information from its equity members and Options Participants for aggregating the activity of affiliated entities for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

* * * * *

Chapter XV Options Pricing

BX Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV. For purposes of assessing fees and paying rebates, the following references should serve as guidance.

The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

The term "Non-BX Options Market Maker" or ("O") is a registered market maker on another options exchange that is not a BX Options Market Maker. A Non-BX Options Market Maker must append the proper Non-BX Options Market Maker designation to orders routed to BX Options.

The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term "Common Ownership" shall mean Participants under 75% common ownership or control.

(a) For purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided by BX depends upon the volume of an Options Participant's activity, an Options Participant may request that BX aggregate its activity with the activity of its affiliates.

(1) An Options Participant requesting aggregation of affiliate activity shall be required to certify to BX the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform BX immediately of any event that causes an entity to cease to be an affiliate. BX shall review available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. BX shall approve a request unless it determines that the certification is not accurate.

(2) If two or more Options Participants become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by BX shall be deemed to be effective as of the first day of that month. If two or more Options Participants become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by BX shall be deemed to be effective as of the first day of the next calendar month.

(b) For purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided, by BX depends upon the volume of an Options Participant's activity, references to an entity (including references to a "Options Participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) For purposes of options pricing, the term "affiliate" of an Options Participant shall mean any Options Participant under 75% common ownership or control of that Options Participant.

With respect to Chapter XV, Sections 2(1) and (2) the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend BX Options Rules at Chapter XV, entitled "Options Pricing," to

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

harmonize the process by which the Exchange will collect information from Options Participants that desire their activity to be aggregated for the purposes of assessing charges or credits with the process currently required for equity members on BX. The Exchange proposes to adopt the process that is used by equity members today without changing that process. The Exchange believes that this filing is non-controversial because the process, as proposed, will not change.

Today, equity members may aggregate affiliate activity based on volume of activity for purposes of pricing.[3] Today, the Exchange does not offer the ability to aggregate pricing to its Options Participants. The Exchange is proposing to define Common Ownership, in the same manner it is defined today for options participants at The NASDAQ Options Market LLC ("NOM") and NASDAQ OMX PHLX LLC ("Phlx"). The term "Common Ownership" means Participants under 75 percent common ownership or control. The Exchange proposes to define Common Ownership in the instance that BX Options offered the ability to aggregate pricing. Further, the Exchange proposes to adopt the same process that exists today for equity members with respect to the manner in which it would collect information to aggregate pricing.

Today, a BX equity member requesting aggregation of affiliate activity is required to certify to BX the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and also is required to inform BX immediately of any event that causes an entity to cease to be an affiliate. BX reviews available information regarding the entities, and reserves the right to request additional information to verify the affiliate status of an entity. BX approves a request unless it determines that the certification is not accurate. Further, if two or more members become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by BX is deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by BX is deemed to be effective as of the first day of the next calendar month.

The Exchange proposes to amend BX Options Rules at Chapter XV to adopt language consistent with the requirements applied today to BX equity members and require BX Options Participants to provide the same type of information in order to receive aggregated pricing.

The Exchange believes that harmonizing the Options Rules of BX to conform to those of NOM and Phlx with respect to Common Ownership and also requiring all BX members, equity and options, to provide information with respect to affiliates promotes consistency and avoids confusion.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue an Options Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposal will harmonize its Common Ownership Rules with those of NOM and Phlx and also will harmonize the process by which the Exchange collects information from equity members and Options Participants regarding the aggregation of activity of affiliated entities for the purpose of assessing charges or credits.

The Exchange believes that applying the same 75% standard for Common Ownership as NOM and Phlx will provide consistency among these exchanges with respect to aggregating volume. In addition, the Exchange believes that harmonizing the process by which the Exchange collects information related to aggregation for equity members and Options Participants will provide consistency to market participants with respect to meeting the requirements to aggregate on BX. Also, the Exchange believes that adopting this method for collecting such information on aggregated pricing, with respect to Options Participants, will ensure proper validation for firms entitled to the aggregation.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the manner in which it aggregates pricing and collects information related to the aggregation of activity of affiliated entities for the purposes of assessing charges or credits for equity members and Options Participants. The Exchange intends to apply a uniform process to request such aggregation for all BX members and BX Options Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate., it has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2014–039 on the subject line.

[3] *See* BX Rule 7027(a).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–039 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014–21359 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72963; File No. SR–NYSEArca–2014–99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Operation of the NYSE Arca ETP Incentive Program, Currently Scheduled To Expire on September 3, 2014, for an Additional Year

September 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 28, 2014, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of the NYSE Arca ETP Incentive Program, currently scheduled to expire on September 3, 2014, for an additional year. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of the NYSE Arca ETP Incentive Program ("Incentive Program"),[4] a one-year pilot program for issuers of certain exchange-traded products ("ETPs") listed on the Exchange, for an additional year. The Incentive Program is currently scheduled to expire on September 3, 2014. As proposed, the pilot program would be set to end on September 4, 2015.

NYSE Arca established the Incentive Program to enhance the market quality for ETPs by incentivizing Market Makers[5] to take Lead Market Maker ("LMM") assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs. The Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange. Moreover, the Exchange believes that the Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

This filing seeks to extend the current operation of the Incentive Program for an additional year to allow the Commission, the Exchange, LMMs, and issuers to further assess the impact of the Incentive Program before making it available to other securities and implementing the program on a permanent basis.[6] During the initial one-year pilot period, because no ETP issuers signed up for the Incentive Program, the Exchange does not have any data to assess the impact of the Incentive Program on ETP market quality or whether any provisions of the Incentive Program should be modified.[7]

[4] *See* Rule 8.800 and Securities Exchange Act Release No. 34–69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEArca–2013–34) (order establishing the Incentive Program).

[5] A Market Maker is an Equity Trading Permit Holder ("ETP Holder") that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. *See* NYSE Arca Equities Rule 1.1(v). An ETP Holder is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit. *See* NYSE Arca Equities Rule 1.1(n).

[6] The Exchange notes that any proposed further continuance of the Incentive Program or proposal to make the Inventive Program permanent would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

[7] *See* Securities Exchange Act Release No. 34–69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEArca–2013–34) (order approving Rule 8.800 and specifying the requirement for the

The Exchange believes that extending the pilot period for an additional year will provide additional time for issuers to participate in the Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the Incentive Program before making it available to other securities or implementing it on a permanent basis.[8]

This filing is not otherwise intended to address any other issues and does not propose any substantive changes to the Incentive Program. The Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed extension.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it provides a venue to enhance quote competition, improve liquidity, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions while reducing spreads and transaction costs. Moreover, requesting an extension of the Incentive Plan will permit additional time for the Commission, the Exchange, LMMs, and issuers to assess the impact of the Incentive Program before making it available to other securities. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the Incentive Program will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which issuers and market participants can readily favor competing venues. In such an environment, the Exchange must continually review and consider adjusting the services it offers and the requirements it imposes in order to remain competitive with other U.S. equity exchanges. Moreover, the competition for listings among the exchanges is fierce. The Exchange notes that BATS Exchange, Inc. ("BATS") has already implemented a program similar to the Exchange's proposed Incentive Program,[12] and NASDAQ has received approval to do so as well.[13]

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to allow the Incentive Program to continue without interruption after September 3, 2014, and therefore be available should an issuer be interested in participating during September 2014. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] As stated in the proposal, the Exchange seeks to extend the current operation of the Incentive Program for an additional year and does not propose any substantive changes to the Incentive Program. The Exchange states that during the initial one-year pilot period, no ETP issuers signed up for the Incentive Program, and therefore, the Exchange has no data to assess the impact of the Incentive Program on ETP market quality or whether any provisions of the Incentive Program should be modified.[17] The Exchange believes that extending the pilot period for an additional year will provide additional time for issuers to participate in the Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the Incentive Program. The Commission notes that if the Incentive Program in its current form continues to go unused, the Exchange will not seek an additional extension of the pilot period. Because the proposed change does not alter the substantive terms of the Incentive Program and does not raise any novel or unique regulatory issues, the

Exchange to assess the impact of the Incentive Program).

[8] The Exchange notes that if the Incentive Program in its current form continues to go unused, the Exchange will not seek an additional extension of the pilot period.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] *See* Interpretation and Policy .02 of BATS Rule 11.8. *See also* Securities Exchange Act Release Nos. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) and 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011).

[13] *See* Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See supra* note 6. The Commission notes that any proposed modification of any provision of the Incentive Program would also require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder.

Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–99. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–99 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21357 Filed 9–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72968; File No. SR–Phlx–2014–57]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Common Ownership

September 3, 2014.

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 20, 2014, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes proposal to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits.

The Exchange requests that this filing become operative on December 1, 2014.

The text of the proposed rule change is set forth below. Proposed new language is in italics; deleted text is in brackets.

NASDAQ OMX PHLX LLC[1] PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

[1]PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

* * * * *

VIII. NASDAQ OMX PSX FEES

* * * * *

Aggregation of Activity of Affiliated Member Organizations

(a) No Change

(b) No Change

(c) For purposes of this provision, the term[s set forth below shall have the following meanings:]

[(1) An] "affiliate" of a member organization shall mean any [wholly owned subsidiary, parent, or sister of the]member organization *under 75% common ownership or control of* that [is also a]member organization.

[(2) A "wholly owned subsidiary" shall mean a subsidiary of a member organization, 100% of whose voting stock or comparable ownership interest is owned by the member organization, either directly or indirectly through other wholly owned subsidiaries.]

[(3) A "parent" shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member organization.]

[(4) A "sister" shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member organization.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Chapter VIII of the Pricing Schedule to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits by making it consistent with the definition of "Common Ownership" in the Preface of the Pricing Schedule which relates to options pricing. For purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity. A member organization may request that the Exchange aggregate its activity with the activity of its affiliates.[3] Therefore, for purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity, references to an entity (including references to a "member organization", or a "participant") shall be deemed to include the entity and its affiliates that have been approved for aggregation.[4]

Currently, PSX Rules state that for purposes of applying any PSX charge or credit where the charge assessed, or credit provided, by Phlx depends upon the volume of a member organization's activity, a member organization may request that the Exchange aggregate its activity with the activity of its affiliates.[5] The Exchange proposes to amend Chapter VIII of the Pricing Schedule to conform that rule to that of Phlx Options Pricing Rules so that equities and options members/member organizations are treated consistently with respect to affiliations of member organizations for purposes of pricing. Phlx's Options Rule provides, "Common Ownership" shall mean Participants under 75 percent common ownership or control.[6] The Exchange desires to take the current standard of 100 percent for equities member organizations and align that standard to the 75 percent standard for options members and member organizations.

Pursuant to Chapter VIII of the Pricing Schedule, a member organization requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, the Exchange reserves the right to request information to verify the affiliate status of an entity.[7]

The Exchange intends to amend the Phlx options rules to similarly require the certifications and approvals as noted herein. The Exchange intends that this rule change and the options rule changes noted herein harmonize the process by which the Exchange gathers information related to affiliated member organizations and then in turn, for purposes of pricing, treat both equities and options members alike with respect to the application of aggregated pricing.

The Exchange proposes to apply this pricing as of December 1, 2014 and issue an Options Trader Alert to its members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposal will harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits with the treatment of the aggregation of activity of affiliated member organizations in relation to options pricing so that more member organizations will be able to benefit from lower charges and/or increased credits. The proposal will further serve to reduce disparity of treatment between member organizations with regards to the pricing of different services and reduce any potential for confusion in how activity can be aggregated. The Exchange believes the rule change avoids disparate treatment of members that have divided their various business activities between separate corporate entities as compared to members that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other members may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons, and those affiliates are not also considered wholly owned affiliates. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed change, such corporate affiliates that cannot be considered wholly owned but are under common control would not receive the same treatment as members who are considered wholly owned affiliates. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory in permitting both wholly owned and common control. In addition to ensuring fair and equal treatment of its members, the Exchange does not want to create incentives for its members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

The Exchange believes that this proposed rule change may enable additional equity member organizations to aggregate pricing because the standard will be reduced from 100 percent to 75 percent for these member organizations. There are no current equity member organizations that would no longer be entitled to the aggregation as a result of this rule change. Further, the Exchange seeks to harmonize the manner in which aggregated pricing is treated on its three markets, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc. and Phlx and as between equities and options, by developing one standard for aggregated pricing and one method for collecting such information on aggregated pricing to ensure proper validation of that pricing in the manner in which it is occurring on Phlx for equity member organizations today.

Today, BATS Exchange, Inc. ("BATS") equity members are permitted to aggregate share volume calculations for wholly owned affiliates. The Exchange [sic] allows a member to aggregate volume with other members

[3] *See* Chapter VIII of the Pricing Schedule.

[4] *Id.*

[5] An "affiliate" of a member organization shall mean any wholly owned subsidiary, parent, or sister of the member organization that is also a member organization. A "wholly owned subsidiary" shall mean a subsidiary of a member organization, 100 percent of whose voting stock or comparable ownership interest is owned by the member organization, either directly or indirectly through other wholly owned subsidiaries. A "parent" shall mean an entity that directly or indirectly owns 100 percent of the voting stock or comparable ownership interest of a member organization. A "sister" shall mean an entity, 100 percent of whose voting stock or comparable ownership interest is owned by a parent that also owns 100 percent of the voting stock or comparable ownership interest of a member organization. *See* Chapter VIII of the Pricing Schedule.

[6] *See* the Preface of the Pricing Schedule.

[7] *See* Chapter VIII of the Pricing Schedule.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

that control, are controlled by, or are under common control with such member.[10] To the extent two or more affiliated companies maintain separate Exchange memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such members to count overall volume of the affiliates in calculating volume. BATS does not specify a specific percentage for such aggregation. The Exchange is specifying 75 percent, similar to the percentage applied to Options Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to harmonize the treatment of the aggregation of activity of affiliated member organizations for the purposes of assessing charges or credits with those rules contained in Chapter XV which relate to options pricing. The Exchange also believes that certain market participants may be able to aggregate because the standard is decreasing from 100 percent to 75 percent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2014–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SRPhlx–2014–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–57 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21362 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2014) [sic] (SR–BATS–2011–012).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72973; File No. SR–NYSE–2014–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Establish a Billing Practice With Respect to Billing Disputes

September 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 21, 2014, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to establish a billing practice with respect to billing disputes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to establish a billing practice to prevent members [4] from contesting their bills long after they have been sent an invoice. In accordance with the proposed rule change, members must submit all disputes no later than sixty calendar days after receipt of an Exchange invoice. After sixty calendar days, all fees assessed by the Exchange will be considered final. The Exchange provides members with both daily and monthly fee reports and thus believes members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that members dispute an invoice within this time period will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when members do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes. The Exchange notes that this type of provision is common among many other exchanges.[5]

The Exchange also proposes to state that all billing disputes must be submitted to the Exchange in writing,[6] and must be accompanied by supporting documentation. The Exchange believes that this requirement, which is also similar to requirements of other exchanges,[7] will further streamline the billing dispute process.

In addition, in order for members to be fully aware of this rule regarding fee disputes, the Exchange proposes to include it on the Price List and at the bottom of each invoice regarding the handling of billing disputes.

[4] For the purposes of this filing, the term "member" refers to "member organization" as defined in NYSE Rule 2(b).

[5] *See* Securities Exchange Act Release No. 72410 (June 17, 2014), 79 FR 35605 (June 23, 2014) (SR–MIAX–2014–27); Securities Exchange Act Release No. 71286 [sic] (January 14, 2014), 79 FR 3442 (January 21, 2014) (SR–ISE–2014–02); Securities Exchange Act Release No. 62661 (August 6, 2010), 75 FR 49544 (August 13, 2010) (SR–Phlx–2010–110).

[6] The Exchange invoice specifies contact information for billing inquiries.

[7] *See supra* note 5.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within sixty calendar days from receipt of the invoice, is reasonable in the public interest because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable because it applies equally to all members. The proposed provision regarding fee disputes in the Price List promotes the protection of investors and the public interest by providing a clear and concise mechanism in Exchange Rules for members to dispute fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 60-day limitation is fair and equitable because it will be implemented prospectively on all members, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to billing dispute language adopted by other exchanges.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the proposed rule change, which applies equally to all members, is intended to reduce the Exchange's administrative burden, and is substantially similar to rules adopted by other exchanges. Because the Exchange does not propose any substantive changes regarding fees applicable to members, the proposal does not impose any burden on competition.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See supra* note 5.

[11] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2014–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–45, and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21391 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72970; File No. SR–CBOE–2014–066]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Trade Nullification and Price Adjustment

September 3, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 26, 2014, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules regarding trade nullification and price adjustment. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Rule 6.19, "Trade Nullification and Price Adjustment Procedure."[3] As proposed, Rule 6.19 will allow for transactions to be nullified if both parties to the transaction agree to the nullification and allow the price of executions to be adjusted if the price adjustment is agreed to by both parties to the transaction and authorized by the Exchange.[4] The Exchange is also proposing to make other conforming administrative changes to streamline the rules governing this subject within the Exchange's rules.

Background

Currently, pursuant to Exchange Rules 6.13(d) and 6.25(f), the Exchange allows for parties to agree to nullify an execution. Rule 6.13(d) also states that once both parties agree to the trade nullification, one party must "contact the Help Desk which will confirm the agreement and disseminate cancellation information in prescribed OPRA format." In addition, the Exchange currently allows for a mutual price adjustment for trades that meet the obvious error requirements pursuant to Exchange Rules 6.25(a)(1)(i) and 6.25(a)(1)(ii) if those mutual agreements are done within specific timeframes.[5] The Exchange is now proposing to relocate the aforementioned trade nullification language and add a provision to allow parties to mutually adjust prices of executions outside of those done in obvious error.

Proposed New Rule 6.19

The Exchange is proposing to add Rule 6.19, "Trade Nullification and Price Adjustment Procedure," which would: (a) Allow for any trades on the

[3] The Exchange notes that this proposal is only intended to be effective until the joint efforts by the exchanges to create uniform trade nullification and adjustment rules are approved and in effect. Once the uniform rule has been approved and is effective, the Exchange will amend its rules appropriately.

[4] The Exchange notes that, as proposed, Rule 6.19 will only apply to trades that were executed on the Exchange and, as such, any orders that were either fully or partially routed to, or executed, on another Exchange will not be subject to the proposed Rule 6.19.

[5] *See* Exchange Rule 6.25(a)(1)(i) which allows executions that are erroneous to be adjusted to an agreed upon price within ten (10) minutes where no party to the transaction is a non-broker-dealer customer. *See also* 6.25(a)(1)(ii) which allows parties to adjust an erroneous transaction to a mutually agreed upon price within thirty (30) minutes where at least one party is a non-broker-dealer customer.

Exchange to be nullified if both parties to the trade agree to such nullification, and (b) allow for prices of executions to be adjusted if the price adjustment is agreed upon by both parties of the trade and authorized by the Exchange.[6]

As stated above, the Exchange currently allows for trades to be nullified based upon mutual agreement.[7] With the proposed addition of Rule 6.19, the Exchange is only moving the location of this provision to eliminate confusion. The Exchange believes that having the provision as a standalone rule will make it easier for Trading Permit Holders ("TPHs") to locate. In addition, the Exchange believes this administrative change will streamline the provisions surrounding this notion to put in one place.

The Exchange is also proposing, however, to add a provision to allow TPHs to mutually agree to adjust a price of an execution. The Exchange believes this provision is necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge transactions in other markets, including securities and futures, many TPHs, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment will result in the least amount of disruption to the overall market. The Exchange also notes that current Exchange rules allow for prices of trades to be adjusted at the consent of both parties if such transactions are within the current obvious error provisions. The Exchange is now proposing to merely allow this practice for any trade.

As proposed, Rule 6.19 expressly states that trades may be subject to nullification or price adjustment only if such trades are authorized by the Exchange. The Exchange notes that this process is very similar to the process TPHs follow today for trade nullification based upon mutual consent. As described in more detail above, current Rule 6.13(d) allows two parties to agree to a trade nullification and "contact the Help Desk which will confirm the agreement and disseminate cancellation information in prescribed OPRA format." The Exchange is only slightly changing this procedure by expressly requiring Exchange authorization prior to the effectuation of such nullification or price adjustment. As part of the authorization process, in the case of a mutual nullification or mutual price adjustment, the Exchange will only authorize if the Exchange received verification from both parties to the trade that a mutual agreement has been made. In addition, prior to an authorization for a mutual price adjustment, the Exchange will ensure the agreed upon price would have been permissible and in compliance with all Exchange and Securities and Exchange Commission Rules, as amended, at the time the original transaction was executed.[8] Finally, the proposed rule will state that the format and information required by the Exchange for this submission will be released by the Exchange via Regulatory Circular. As such, prior to Rule 6.19 becoming operative, the Exchange will provide TPHs with specific requirements via an Exchange Regulatory Circular. The circular will, among other things, state specific timeframes required for requests and the format in which the requests will be accepted by the Exchange.

Administrative Changes

Finally, the Exchange is proposing to make administrative conforming changes to ensure Exchange rules on the subject are consistent. More specifically, the Exchange is proposing to delete the provisions in current Rules 6.13(d) and 6.25(f). The Exchange believes that deleting current Exchange Rule 6.13(d) will avoid any confusion with the proposed Rule 6.19. Because the proposed Rule 6.19 will address trade nullification and adjustments at all times, the Exchange does not believe it is still necessary to include a reference to trade nullification within the Exchange's rule related to obvious and catastrophic errors or other places in the Exchange's rules. Thus, the Exchange believes the proposed administrative changes are necessary to eliminate confusion given the proposed Rule 6.19.

Conclusion

To conclude, the Exchange believes that the proposed changes are in furtherance of the Act because the proposed Rule 6.19 will allow TPHs to agree to nullify transaction or adjusts prices of transactions to maintain a fair and orderly market. As stated above, the Exchange intends to release a Regulatory Circular to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

More specifically, the Exchange believes that the proposed changes are consistent with the Act as they are designed to promote just and equitable principles and protect investors and the public interest. In particular, the Exchange believes the proposed change to move the provision authorizing parties to mutually agree to nullify a trade protects investors by eliminating confusion and making the provision more clear. Because options trades are used to hedge transactions in other markets, including securities and futures, many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an

[6] *See* note 2 *supra*.

[7] *See* Exchange Rules 6.13(d) and 6.25(f).

[8] For example, the Exchange would ensure that the mutually agreed upon price would ensure that that mutually agreed upon price would not have traded through resting interest at the time of the initial execution.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

adjustment will result in the least amount of disruption to the overall market. Finally, the Exchange believes that the other administrative changes are just and equitable as they are merely trying to create more transparency in the Exchange's rules. Finally, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all Trading Permit Holders equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed rule change will foster competition as it will allow for less overall disruption to the market and encourage participation on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CBOE–2014–066*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–066 and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21364 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72961; File No. SR–NASDAQ–2014–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to Proposed Changes to NASDAQ Rule 4120(c) To Modify the Parameters for Releasing Securities for Trading Upon the Termination of a Trading Halt in a Security That is the Subject of an Initial Public Offering

September 3, 2014.

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 20, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to amend NASDAQ Rule 4120(c) to modify the parameters for releasing securities for trading upon the termination of a trading halt in a security that is the subject of an initial public offering.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4120(c) to strengthen safeguards against unexpected volatility with respect to the price established by the NASDAQ Halt Cross for a security that is the subject of an IPO (the "IPO Halt Cross" or the "Cross"). In 2013, NASDAQ adopted a new process for releasing IPO securities.[3] The changes were adopted to improve the IPO release process by increasing NASDAQ's flexibility to commence trading when appropriate. To this end, NASDAQ eliminated the former rule requirement that limited the number of extensions of the period prior to launch—the Display Only Period—to six five-minute periods. NASDAQ instead adopted a two-phase process under which the initial 15-minute Display Only Period is followed by a "Pre-Launch Period" that is not of a fixed duration. Under the current rule, the Pre-Launch Period will continue until (1) NASDAQ receives notice from the underwriter of the IPO that the security is ready to trade and there is no "order imbalance" in the security, in which case the security is released for trading; or (2) the underwriter, with concurrence of NASDAQ, determines to postpone and reschedule the IPO. Every five seconds during the Display Only Period and the Pre-Launch Period, NASDAQ disseminates the Current Reference Price, an indication of the price at which the IPO Halt Cross would execute if it occurred at that time.

The requirement regarding the absence of an order imbalance was designed to ensure that the expected price of the security is reasonably stable and that trading interest is balanced at the time trading commences. There are currently several conditions under which an order imbalance in an IPO security will be considered to exist:

- The Current Reference Price disseminated immediately prior to commencing the release of the IPO for trading during the Pre-Launch Period and any of the three preceding Current Reference Prices differ by more than the greater of 5 percent or 50 cents;
- upon completion of the Cross calculation, the calculated price at which the security would be released for trading and any of the three preceding Current Reference Prices disseminated immediately prior to the initiation of the Cross calculation differ by more than the greater of 5 percent or 50 cents; or
- all market orders will not be executed in the Cross.

These restrictions are designed to prevent circumstances where a misunderstanding by the underwriter as to the state of the order book risks launching trading at a time of material volatility in the book for the security. Order imbalances are calculated by the IPO Halt Cross system, which automatically prevents launch of a halted security when an order imbalance exists.

NASDAQ is proposing to enable the underwriter to provide even greater protection against volatility in an IPO security by replacing the current system for comparing against prior Current Reference Prices with a system under which the expected price of the IPO Halt Cross will be displayed to the underwriter, who will then select price bands to ensure that the actual calculated price at which the IPO Halt Cross would occur does not deviate from the expected price by more than the selected amounts. Such price deviations are possible because market participants may continue to enter and cancel orders during the period between the display of the expected price to the underwriter and the commencement of the Cross calculation, a period of up to five seconds in duration.[4] Although the current system has generally done a good job of protecting against unexpected changes in the pricing of an IPO Halt Cross by ensuring that the Current Reference Price has been stable and the final calculated price is not significantly different from preceding Current Reference Prices, the proposed change would introduce the opportunity for underwriters to set tighter limits at their discretion based on the characteristics of and expectations for each IPO.

Under the proposed modified system, the Pre-Launch Period will end and the security will be released for trading when the following conditions are all met:

- NASDAQ receives notice from the underwriter of the IPO that the security is ready to trade. The NASDAQ system will calculate the Current Reference Price at that time (the "Expected Price") and display it to the underwriter. If the underwriter then approves proceeding, the NASDAQ system will conduct the following validation checks:
- The NASDAQ system must determine that all market orders will be executed in the cross; [5]
- the security passes a new price validation test, which will replace the current system for comparison against recent Current Reference Prices.

For purposes of applying the price validation test, the underwriter must select price bands prior to the conclusion of the Pre-Launch Period.[6] The System will then compare the Expected Price with the actual price calculated by the Cross. If the actual price calculated by the Cross differs from the Expected Price by an amount in excess of the price band selected by the underwriter, the security will not be released for trading and the Pre-Launch Period will continue. The underwriter must select an upper price band (i.e., an amount by which the actual price may not exceed the Expected Price) and a lower price band (i.e., an amount by which the actual price may not be lower than the Expected Price). If a security does not pass the price validation test, the underwriter may, but is not required to, select different price bands before recommencing the process to release the security for trading.

For example, assume that the Expected Price for the IPO Halt Cross shown to the underwriter was $32 per share, and the underwriter selected an upper price band of $0.10 and a lower price band of $0.05. In that case, the actual price calculated by the system for the Cross could not be higher than $32.10 nor lower than $31.95.

As is currently the case, the failure to satisfy any of the conditions for completion of the IPO Cross results in a delay of the release for trading of the IPO, and a continuation of the Pre-Launch Period, until all conditions have been satisfied. Thus, if the price validation is not satisfied, the Pre-Launch Period would continue seamlessly, with members able to continue to enter or cancel orders. The security would then repeat the process for release until such time as the

[3] Securities Exchange Act Release No. 69897 (July 1, 2013), 78 FR 40782 (July 8, 2013) (SR–NASDAQ–2013–092). *See also* Securities Exchange Act Release No. 70911 (November 21, 2013), 78 FR 71011 (November 27, 2013) (SR–NASDAQ–2013–143) (adopting additional refinements to process for IPO securities).

[4] Cancellations received following the commencement of the Cross calculation are blocked, and orders received thereafter are not Cross-eligible. *See* In the Matter of The NASDAQ Stock Market LLC and NASDAQ Execution Services, LLC, Securities Exchange Act Release No. 69655 (May 29, 2013), at ¶65.

[5] This requirement is not being modified from the requirement of the current rule with respect to market orders, but the wording is being modified to make it clearer. The intent of the restriction is to ensure that if a market participant enters an order offering to buy or sell in the IPO Halt Cross at any price, the Cross should not occur unless all such orders can be executed.

[6] The underwriter can select the price bands at any time during the Display Only Period or Pre-Launch Period, and can modify them at any time prior to the conclusion of the Pre-Launch Period.

conditions required for launch were satisfied. Thus, the underwriter would again have to determine that it believes the security is ready to trade, the underwriter would be shown the applicable Expected Price, and the security would launch if all market orders would be executed and the price validation was satisfied. As noted above, the underwriter would be able to select different price bands for each attempt to launch the security. Thus, an underwriter might select an upper and a lower band of $0 initially, such that the security would not launch unless the calculated price equaled the Expected Price. If the security did not pass the validation check, however, the underwriter could subsequently choose to widen the price bands to allow the IPO to proceed at a price that might vary from the Expected Price. As is also currently the case, the underwriter, with concurrence of NASDAQ, may determine at any point during the IPO Halt Cross process up through the conclusion of the Pre-Launch Period to postpone and reschedule the IPO.[7]

The price bands available for selection shall be in such increments, and at such price points, as may be established from time to time by NASDAQ. The initial available price bands will range from $0 to $0.50, with increments of $0.01. Thus, the underwriter may select a price band of $0 (i.e., no change from the Expected Price is permitted), $0.01, $0.02, or any other $0.01 increment up to $0.50. The underwriter may select different price bands above and below the Expected Price. NASDAQ reserves the right to stipulate wider increments (such as $0.05) or price bands that include certain price points but exclude others (for example, increments of $0.01 up to $0.10, and increments of $0.05 thereafter). In selecting available price bands and increments, NASDAQ will consider input from underwriters and other market participants and the results of past usage of price bands to adopt price bands and increments that promote efficiency in the initiation of trading and protect investors and the public interest. NASDAQ will notify member organizations and the public of changes in available price band or increments through a notice that is widely disseminated at least one week in advance of the change. However, NASDAQ will not (in the absence of the submission of a proposed rule change) allow bands wider than $0.50. Thus, bands will not be wider than the bands that currently govern the comparison between the Cross price and previous Current Reference Prices.

In addition to the foregoing changes, NASDAQ is also proposing to reorganize provisions of Rule 4120 relating to the process for ending a trading halt of securities other than IPO securities. NASDAQ is not making substantive modifications to these rules, however.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change promotes these goals by strengthening protection against unexpected volatility in the pricing of an IPO security. While the current rule provides protection against volatility by providing that the final price of an IPO security calculated by the IPO Halt Cross may not deviate from the most recent three indicative prices by more than five percent or $0.50, there nevertheless exists the possibility that deviations within these bands will occur. The proposed change is designed to protect the underwriter and other market participants from the IPO Halt Cross occurring at a price that deviates unexpectedly from the prices previously disclosed through the Current Reference Price by providing the underwriter the authority to set tighter limits based on the characteristics of and expectations for each IPO. NASDAQ believes that enhancing and strengthening the process in this manner will protect investors as it will serve to minimize unexpected price deviations and avoid confusion among market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change will not affect the ability of market participants to participate fully in the IPO Halt Crosses. Rather, the change is designed to promote stability and reduce volatility in the pricing of the IPO Halt Cross, and therefore does not impose any restriction on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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–NASDAQ–2014–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–081. 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

[7] NASDAQ is modifying the applicable language slightly to make it clear that the authority to cancel and reschedule extends to the *conclusion* of the Pre-Launch Period.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–081, and should be submitted on or before September 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21356 Filed 9–8–14; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before November 10, 2014.

ADDRESSES: Send all comments to Gina Beyer, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gina Beyer, Program Analyst, Disaster Assistance, *gina.beyer@sba.gov* 202–205–6458, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: The requested information is submitted by homeowners or renters when applying for federal financial assistance (loans) to help in their recovery from a declared disaster. SBA uses the information to determine the creditworthiness of these loan applicants, as well as their eligibility for financial assistance.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

(1) *Title:* Disaster Home Loan Application.

Description of Respondents: Disaster Recovery Victims.

Form Number: SBA Form 5C.

Total Estimated Annual Responses: 34,273.

Total Estimated Annual Hour Burden: 42,841.

Curtis B. Rich,

Management Analyst .

[FR Doc. 2014–21444 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before November 10, 2014.

ADDRESSES: Send all comments to Gina Beyer, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gina Beyer, Program Analyst, Disaster Assistance, *gina.beyer@sba.gov,* 202–205–6458, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The requested information is submitted by small businesses or not-for-profit organizations who seek federal financial assistance (loans) to help in their recovery from declared disaster. SBA uses the information to determine the eligibility and creditworthiness of these loan applicants.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

(1) *Title:* Disaster Business Application.

Description of Respondents: Disaster Recovery Victims.

Form Number: SBA Forms 5 and 1368.

Total Estimated Annual Responses: 4,570.

Total Estimated Annual Hour Burden: 10,688.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–21446 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14100 and #14101]

Washington Disaster #WA–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Washington dated 09/03/2014.

Incident: Straight-line Windstorm.

Incident Period: 07/23/2014.

Effective Date: 09/03/2014.

Physical Loan Application Deadline Date: 11/03/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 06/03/2015.

[10] 17 CFR 200.30–3(a)(12).

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Spokane.

Contiguous Counties:

Washington: Lincoln; Pend Oreille; Stevens; Whitman.

Idaho: Benewah; Bonner; Kootenai;

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14100 B and for economic injury is 14101 0.

The States which received an EIDL Declaration # are Washington; Idaho.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 3, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–21440 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14102]

Missouri Disaster #MO–00072 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Missouri, dated 09/03/2014.

Incident: Civil Unrest.

Incident Period: 08/09/2014 and continuing.

Effective Date: 09/03/2014.

EIDL Loan Application Deadline Date: 06/03/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Saint Louis.

Contiguous Counties:

Missouri: Franklin, Jefferson, Saint Charles, Saint Louis City.

Illinois: Madison, Monroe, Saint Clair.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 141020.

The States which received an EIDL Declaration # are Missouri, Illinois.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: September 3, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–21436 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Quarterly Public Meeting

AGENCY: National Women's Business Council, Small Business Administration.

ACTION: Notice of open public meeting.

DATES: The meeting will be held on September 24, 2014 from 2:30 p.m. to 5:00 p.m. EST.

ADDRESSES: The meeting will be held at the Ronald Reagan Building, located at 1300 Pennsylvania Avenue NW., in Washington, DC. The business meeting will be in the Horizon Ballroom, and the workshops will be held in the Polaris Suites.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

This meeting will focus on Women's Access to Markets, one of the NWBC's four pillars. The business portion will include remarks from the Council Chair, Carla Harris, and an update from each of the NWBC committees. There will also be review of NWBC's FY2013 research agenda, and an introduction of the FY2014 and FY2015 projects. The majority of time will be spent in breakout sessions and workshops geared at different audiences. The breakout topics are: exporting, corporate procurement, and government contracting.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. To RSVP and confirm attendance, the general public should use the following link: *http://bit.ly/rsvpfor924*. Anyone wishing to make a presentation to the NWBC at this meeting must either email their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

For more information, please visit the National Women's Business Council Web site at *www.nwbc.gov*.

Diana Doukas,

SBA Committee Management Officer.

[FR Doc. 2014–21272 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the 1st quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the 1st quarter will be held on the following dates:

Tuesday, October 21, 2014 at 1:00pm EST;

Tuesday, November 18, 2014 at 1:00pm EST;

Tuesday, December 16, 2014 at 1:00pm EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

—SBA Update

—Annual Meetings

—Board Assignments

—Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Nixon by fax or email. Her contact information is Monika Nixon, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–7310, Fax 202–481–5624, email, *monika.nixon@sba.gov*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Nixon at the information above.

Diana Doukas,

Committee Management Officer.

[FR Doc. 2014–21442 Filed 9–8–14; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2015 WTO Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year (FY) 2015 (Oct. 1, 2014, through Sept. 30, 2015) in-quota quantity of the tariff-rate quotas (TRQs) for imported raw cane sugar, refined sugar (syrups and molasses), specialty sugar, and sugar-containing products.

DATES: *Effective Date:* October 1, 2014.

ADDRESSES: Inquiries may be delivered to Ann Heilman-Dahl, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas (TRQs) for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On September 2, 2014, the Secretary of Agriculture (Secretary) announced the sugar program provisions for fiscal year (FY) 2015. The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for FY 2015 of 1,117,195 metric ton * raw value (MTRV), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. USTR is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	FY 2015 raw cane sugar allocations (MTRV)
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,584
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Costa Rica	15,796
Cote d'Ivoire	7,258
Dominican Republic	185,335
Ecuador	11,584
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,584
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad & Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On September 2, 2014, the Secretary also announced the establishment of the in-quota quantity of the FY 2015 refined sugar TRQ at 127,000 MTRV for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. This amount includes the minimum level to which the United States is committed under the WTO Uruguay Round Agreements (22,000 MTRV of which 1,656 MTRV is reserved for specialty sugar) and an additional 105,000 MTRV for specialty sugars. USTR is allocating

the refined sugar TRQ as follows: 10,300 MTRV of refined sugar to Canada, 2,954 MTRV to Mexico, and 7.090 MTRV to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Secretary has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV included in the WTO minimum plus an additional 105,000 MTRV. The first tranche of 1,656 MTRV will open October 10, 2014. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 38,850 MTRV will open on October 24, 2014. The third, fourth, and fifth tranches of 22,050 MTRV each will open on January 9, 2015, April 10, 2015 and July 10, 2015, respectively. The second, third, fourth and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to chapter 17 of the HTS, USTR is allocating 59,250 MT to Canada. The remainder of the in-quota quantity, 5,459 MT, is available for other countries on a first-come, first-served basis.

Raw cane sugar, refined and specialty sugar and sugar-containing products for FY 2015 TRQs may enter the United States as of October 1, 2014.

* *Conversion factor:* 1 metric ton = 1.10231125 short tons.

Michael Froman,

United States Trade Representative.

[FR Doc. 2014–21321 Filed 9–8–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Special Awareness Training for the Washington DC Metropolitan Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information is required of persons who must receive training and testing under 14 CFR 91.161 in order to fly within 60 nautical miles (NM) of the Washington, DC omni-directional range/distance measuring equipment (DCA VOR/DME).

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0734.

Title: Special Awareness Training for the Washington DC Metropolitan Area

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The final rule containing this information collection requirement was published on August 12, 2008 (73 FR 46797). The collection of information is solicited by the FAA in order to maintain a National database registry for those persons who are required to receive training and be tested for flying in the airspace that is within 60 NM of the DCA VOR/DME. This National database registry provides the FAA with information on how many persons and the names of those who have completed this training.

Respondents: Approximately 366 pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 122 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21457 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reporting of Information Using Special Airworthiness Information Bulletin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The FAA issues Special Airworthiness Information Bulletins (SAIBs) to alert, educate, and make recommendations to the aviation community and individual aircraft owners/operators on ways to improve products. They may include requests for reporting of results from requested actions/inspections.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0731.

Title: Reporting of Information Using Special Airworthiness Information Bulletin.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: A special airworthiness information bulletin (SAIB) is an important tool that helps the FAA to gather information to determine whether an airworthiness directive is necessary. An SAIB alerts, educates, and make recommendations to the aviation community and individual aircraft owners and operators about ways to improve the safety of a product. It contains non-regulatory information and guidance that is advisory and may include recommended actions or inspections with a request for voluntary reporting of inspection results.

Respondents: Approximately 1,120 owners/operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 467 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21460 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: AVIATOR Customer Satisfaction Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. This collection of information is necessary to determine how satisfied applicants are with the automated staffing solution. The information enables the FAA to improve and enhance its automated staffing process.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0699.

Title: AVIATOR Customer Satisfaction Survey.

Form Numbers: There are no FAA Forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The information will be collected via an online form. It is part of an automated staffing tool. The data collected will be analyzed by Human Resources, the AVIATOR Program Manager, and the Enterprise Service Center (ESC) to determine the quality of our service to our users and customers, to address any problems or issues found as a result of the data analysis.

Respondents: Approximately 131,000 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 7 minutes.

Estimated Total Annual Burden: 4,585 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21456 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is used to determine if applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with reentry operations from a site not operated by or situated on a Federal launch range.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0643.

Title: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data is necessary for a U.S. citizen to apply for and obtain a reusable launch vehicle (RLV) mission license or a reentry license for activities by commercial or non-federal entities (that are not done by or for the U.S. Government) as defined and required by 49 U.S.C., Subtitle IX, Chapter 701, formerly known as the Commercial Space Launch Act of 1984, as amended. The information is needed to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interests of the United States.

Respondents: Approximately 6 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5,000 hours.

Estimated Total Annual Burden: 30,000 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21443 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: License Requirements for Operation of a Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0644.

Title: License Requirements for Operation of a Launch Site.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data requested for a license application to operate a commercial launch site are required by 49 U.S.C. Subtitle IX, 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70119 (1994). The information is needed in order to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interest of the United States.

Respondents: Approximately 1 applicant.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2,322 hours.

Estimated Total Annual Burden: 4,644 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21445 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. One of the ways to have an information program designated as protected under Section 40123 is for an air carrier or other person to submit an application for an individual program. The FAA evaluates the application and either publishes a designation based on the application for public comment or denies the application.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0646.

Title: Protection of Voluntarily Submitted Information.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: To encourage people to voluntarily submit desired information, § 40123 was added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues. This rule imposes a negligible paperwork burden for air carriers that choose to participate in this program. The air carrier submits a letter notifying the Administrator that they wish to participate in a current program.

Respondents: Approximately 5 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 5 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity

of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21461 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. This collection covers the reporting of unauthorized illumination of aircraft by lasers.

DATES: Written comments should be submitted by November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0698.

Title: Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70–2.

Type of Review: Renewal of an information collection.

Background: Advisory Circular 70–2 provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 1,100 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 183 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21448 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, U.S. Fish and Wildlife Service, and NOAA National Marine Fisheries Service that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project known as South Coast 101 HOV Lanes that adds one lane in each direction on U.S. 101 between Bailard Avenue in the City of Carpinteria and Cabrillo Boulevard in the City of Santa Barbara, in the County of Santa Barbara, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 6, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Jason Wilkinson, Environmental Branch Chief, Caltrans, 50 Higuera Street, San Luis Obispo, CA 93401, Monday through Friday 8 a.m. to 5 p.m., (805) 542–4663 or *Jason.wilkinson@dot.ca.gov.* For U.S. Fish and Wildlife Service: Steve Henry, Deputy Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003, Monday through Friday 8 a.m. to 5 p.m. (805) 644–1766, ext 307 or *steve.henry@fws.gov.* For NOAA National Marine Fisheries Service: Rodney McInnis, Administrator, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Monday through Friday 8 a.m. to 5 p.m. (562) 980–4005.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, U.S. Fish and Wildlife Service, and NOAA National Marine Fisheries Service have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project will construct one part-time high occupancy vehicle (HOV) lane in each direction on U.S. 101 for approximately 10 miles between the City of Carpinteria and Cabrillo Boulevard in the City of Santa Barbara. The project would also reconstruct two interchanges at Sheffield Drive and Cabrillo Boulevard, including replacing the left ramps with new right side ramps. The project limits begin 0.22 miles south of the Bailard Avenue overcrossing in the City of Carpinteria to Sycamore Creek in the

City of Santa Barbara. The primary purpose of the project is to reduce existing congestion in the 101 corridor. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on August 26, 2014 and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans as provided above. The Caltrans EA/FONSI can be viewed and downloaded from the Caltrans project Web site at: *http://www.dot.ca.gov/dist05/projects/sb_101hov/index.html* or viewed at four public libraries in the project area. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335].
2. Air: Clean Air Act [23 U.S.C. 109 (j) and 42 U.S.C. 7521(a)].
3. Historic and Cultural Resources: National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 (f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470 (ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
4. Wildlife: Federal Endangered Species Act [16 U.S.C. 1531–1543]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(C); Migratory Bird Treaty Act [16 U.S.C. 760c–760g].
5. Social and Economic: NEPA implementation [23 U.S.C. 109(h)]; Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
6. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1344].
7. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 13112 Invasive Species; E.O. 11988 Floodplain management; E.O. 12898 Federal actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: September 3, 2014.

Jermaine Hannon,

Acting Director, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–21437 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0342]

Hours of Service of Drivers; Application for American Moving & Storage Association Exemption From the 14-Hour Rule

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the American Moving & Storage Association (AMSA) has applied for an exemption for its 3,700 member companies from FMCSA's regulation prohibiting operators of commercial motor vehicles (CMVs) from driving following the 14th hour after coming on duty. The exemption would enable AMSA's drivers to drive their CMVs from a residential area, after completion of household goods shipments, to the nearest place offering safety and security. In no case would the drivers be permitted to drive more than 75 miles or 90 minutes after the 14th hour. FMCSA requests public comment on AMSA's application for exemption.

DATES: Comments must be received on or before October 9, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0342 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov*, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14FDAS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and,

if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The American Moving and Storage Association (AMSA) is a national trade association representing the segment of the motor carrier industry that specializes in household goods transportation. AMSA has approximately 3,700 household goods carrier members, including national and international van lines with agency networks; independent national and regional van lines; and local agents affiliated with a van line network. AMSA's members provide relocation services throughout North America and at strategic points throughout the world.

AMSA is seeking an exemption from the "14-hour rule" in 49 CFR 395.3(a)(2), which prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Under AMSA's proposal, the exemption would only be used by drivers who need to move their trucks from the customer's residence to a safe place for overnight parking when there are delays in completing the job. The overnight parking location would offer safety for the occupants of the CMV, security for the CMV and its cargo, and avoid creating a safety hazard on local streets. In no case would the driver be permitted to drive more than 75 miles or 90 minutes after reaching the 14th hour. Upon reaching a safe place to park their CMVs, drivers using this exemption would then be required to take 10 hours off duty before driving again. The driver must notify the motor carrier each time the extension is used. These log entries would provide verification and a record whenever the exemption is used and be available during compliance reviews.

AMSA contends that operations of its sector of the trucking industry are unique, not only in the commodities carried, but also in the types of services provided and in how its daily operations are conducted. AMSA's drivers spend more time on residential streets than at loading docks, and drive irregular routes based on where customers live, rather than using established freight lanes between large, industrial warehouses.

Drivers typically spend a great part of their 14-hour driving window not driving. Instead, on-duty drivers work in private homes supervising the sorting, wrapping and packing of personal items, the disassembly and the reassembly of furniture and appliances, and the loading and unloading of non-palletized, irregularly shaped, individual items and cartons. The needs of customers dictate that most loading/unloading times start between 8–9 a.m. Consumers frequently change their plans and expect their movers to accommodate these changes. The list of potential unforeseen, impossible-to-plan-for situations that can cause delay is nearly endless. All of these issues can change schedules beyond the original plan developed by the mover.

AMSA states that the vast majority of these situations will not impact their drivers' ability to complete residential loading or unloading jobs within the 14-hour rule. However, when rare, unusual and unforeseen circumstances arise, the 14-hour rule forces drivers nearing the end of their 14-hour shifts to choose one of two impractical alternatives, either (1) stop a moving crew from completing the loading or unloading of a customer's household goods shipment in order to be able to drive the moving truck from the customer's residence to a place offering safety for the occupants of the CMV, security for the CMV and its cargo, and to avoid creating a safety hazard on local streets, or (2) permit completion of the loading or unloading, but leave the moving truck where it is, typically parked on an unsecured residential street, for at least 10 hours before they are permitted to drive again. Neither choice permits efficient, effective or safe operation.

AMSA believes that the requested exemption is comparable to the current regulation permitting certain "short-haul" drivers an increased driving window once per week, and other non-CDL short-haul drivers two such extended duty periods per week. The driving circumstances experienced under this exemption—the relatively short time and distance needed to remove their CMVs from residential areas to safe locations—can be analogous to the "short-haul" situations. AMSA acknowledges that its members and drivers using the requested exemption would still be subject to all of the other Federal Motor Carrier Safety Regulations, including all other hours-of-service requirements.

A copy of AMSA's application for exemption is available for review in the docket for this notice.

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on AMSA's application for an exemption from certain provisions of the driver's HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on October 9, 2014. Comments will be available for examination in the docket at the location listed in the **ADDRESSES** section of this notice.

Issued on: August 29, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–21428 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0298]

Notification of Changes in the New Entrant Safety Assurance Program Operational Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of changes to operational test.

SUMMARY: FMCSA announces two changes to the New Entrant Safety Assurance Program Operational Test (Operational Test) discussed in the Agency's September 4, 2013, notice. First, the Agency will update the IT systems so that when an automatic failure violation (as listed in 49 CFR 385.321) is identified by the Agency based on the records the motor carrier provides during the document submission process, the carrier will automatically fail the new entrant safety audit and be placed into the corrective action process. This is consistent with the current new entrant safety audit process for audits conducted at a motor carrier's principal place of business (PPOB). Second, the Agency will extend the Operational Test through December 2014 to ensure sufficient data is available to calculate the established metrics in order to make an informed decision on any future actions.

DATES: The changes take effect September 9, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2013–0298 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Bennett, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone: (202) 365–8324, email: *joseph.bennett@dot.gov.* If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, 202–366–3024, *Barbara.Hairston@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. New Entrant Safety Assurance Program Operational Test

On September 4, 2013, FMCSA published a notice in the **Federal Register** announcing the New Entrant Safety Assurance Program Operational Test (78 FR 54510). The Agency indicated that the Operational Test began in July 2013 and will be in effect for up to 12 months. The Operational Test procedures allow FMCSA to complete off-site new entrant safety audits, defined as safety audits not conducted at the motor carrier's principal place of business (PPOB), of eligible new entrant motor carriers that can demonstrate basic safety management controls without going to the motor carrier's PPOB by reviewing specific compliance documentation submitted by the motor carrier as requested by FMCSA or its State partners.

In July 2013, this Operational Test included California, Florida, Illinois, New York, Montana, and the Canadian Provinces contiguous to Montana and New York. In December 2013, the state of Alaska was added to the group of test states.

The purpose of the Operational Test is to compare these off-site new entrant audits to the traditional new entrant safety audits conducted at the motor carriers' PPOB. The Agency is assessing each approach's impact on both resource allocation and subsequent safety performance of new entrant motor carriers.

During the first nine months of the Operational Test, eligible new entrant motor carriers submitted requested documents to a new entrant safety auditor who subsequently reviewed the documentation and:

(1) Prepared a report to document that the motor carrier has passed the new entrant safety audit; or,

(2) Contacted the motor carrier to request additional documentation to determine whether the carrier satisfied the criteria for passing the audit; or

(3) Scheduled a new entrant safety audit at the motor carrier's PPOB, as soon as practicable, based upon violations observed from the submitted documentation or the carrier's failure to submit adequate documentation.

II. Changes to the New Entrant Safety Assurance Program Operational Test

Effective September 9, 2014, if during the examination of the submitted documentation, a safety auditor discovers automatic failure violation(s) as listed in 49 CFR 385.321, the motor carrier will fail the new entrant safety audit. The carrier will be placed into the corrective action process pursuant to 49 CFR 385.319(c) and if the carrier does not provide adequate corrective action it will be prohibited from operating in interstate commerce. FMCSA notes that the definition of "safety audit" under 49 CFR 385.3 does not limit the activity to on-site interventions as is the case with the definition of "compliance review." Therefore, the Agency has the discretion under existing regulations to fail carriers during the Operational Test without conducting an on-site safety audit.

FMCSA believes this change needs to be made for the following reasons:

• This process is consistent with the current method concerning automatic failure violations for on-site new entrant audits;

• Since the Operational Test began, when automatic failure violations were discovered during the off-site document review process; many of those carriers still failed the follow-up new entrant safety audit conducted at their PPOB; and,

• Allowing a new entrant motor carrier known to be operating with an automatic failure violation(s) can pose a threat to public safety.

Based on the Agency's experience with the test to date, the Agency will monitor this change and compare the results and workload impacts to the earlier portion of the test. The evaluation will look at the relative workload of processing the additional corrective action submitted by motor carriers that fail the off-site audit and the resources needed to conduct on-site audits in these cases.

In addition, FMCSA is extending the Operational Test through December 2014 to ensure sufficient data is available to calculate the established metrics in order to make an informed decision on any future actions.

Issued on: August 29, 2014.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2014–21424 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0215]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated

advisory criteria published in the Code of Federal Regulations as the "Instructions for Performing and Recording Physical Examinations" have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

DATES: Comments must be received on or before October 9, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0215 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov*, or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 12 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number "FMCSA–2014–0215" and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to

http://www.regulations.gov and in the search box insert the docket number "FMCSA–2014–0215" and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Thomas Avery, Jr.

Mr. Avery is a 45 year-old class B CDL holder in New York. He has a history of seizure and has remained seizure free since 1998. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Avery receiving an exemption.

Michael G. Berthiaume

Mr. Berthiaume is a 54 year-old driver in Minnesota. He has a history of seizure and has remained seizure free since 2006. He takes anti-seizure medication with the dosage and frequency remaining the same since November 2013. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Berthiaume receiving an exemption.

Brian L. Bose

Mr. Bose is a 49 year-old class B CDL holder in Illinois. He has a history of Right Frontal Lobe Epilepsy secondary to a right frontal meningioma which was resected in 1997 and required reoperation in 2014. He had a single postoperative seizure after the re-operation in 2014. He takes anti-seizure medication since 1997. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Bose receiving an exemption.

Aimee-Christine M. Bjornstad

Ms. Bjornstad is a 28 year-old driver in Indiana. She has a history of post traumatic partial epilepsy and has remained seizure free since 2008. She takes anti-seizure medication with a recent change medication in August 2014. If granted the exemption, she would like to drive a CMV. Her physician states that he is supportive of Ms. Bjornstad receiving an exemption.

Leo Kurt Clemens

Mr. Clemens is a 59 year-old class B CDL holder in Pennsylvania. He has a history of seizure and has remained seizure free for more than 25 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 3 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Clemens receiving an exemption.

Danny Lee Crafton

Mr. Crafton is a 65 year-old class A CDL holder in Idaho. He has a history of seizure and has remained seizure free since 1974. He takes anti-seizure medication with the dosage and frequency remaining the same since 2001. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Crafton receiving an exemption.

Kenneth D. Peachey

Mr. Peachey is a 72 year-old class A CDL holder in Pennsylvania. He has a history of seizure and has remained seizure free since 1984. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Peachey receiving an exemption.

Todd W. Riel

Mr. Riel is a 45 year-old class A CDL holder in Ohio. He has a history of a seizure disorder and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Riel receiving an exemption.

Tory Shuler

Mr. Shuler is a 45 year-old driver in New York. He has a history of seizure and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Shuler receiving an exemption.

Philip Neil Stewart

Mr. Stewart is a 43 year-old class A CDL holder in California. He has a history of a seizure disorder and has remained seizure free for 30 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 15 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Stewart receiving an exemption.

Keith T. White

Mr. White is a 59 year-old class A CDL holder in Pennsylvania. He has a history of seizure and has remained seizure free since 1994. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. White receiving an exemption.

Alan T. Von Lintel

Mr. Von Lintel is a 60 year-old driver in Kansas. He has a history of a seizure disorder and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since July 2012. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Von Lintel receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–21421 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0007]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 52 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted on August 8, 2014. The exemptions expire on August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

II. Background

On July 28, 2014, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (79 FR 38652). That notice listed 52 applicants' case histories. The 52 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10) for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 52 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 52 exemption applicants listed in this notice are unable to meet the vision requirement in one eye for various reasons, including central retinal vein occlusion, amblyopia, histoplasmosis, misshapen pupil, detached retina, prosthetic eye, strabismus, high myopia, vision loss, optic nerve atrophy, central scar, corneal scar, refractive amblyopia, complete loss of vision, macular scar, macular hole, glaucoma, chronic central serous chorioretinopathy, early polypoidal choroidal vasculopathy, subforeal choroidal neovascular membrane, bilateral intermediate uveitis, optic nerve hypoplasia, aphakia, optic nerve pallor, cellophane retinopathy, iris rupture, macular degeneration, longstanding optic nerve atrophy, optic atrophy, and strabismic amblyopia. In most cases, their eye conditions were not recently developed. Twenty-nine of the applicants were born with their vision impairments or have had them since childhood.

The 23 individuals that sustained their vision conditions as adults have had them for a period of 2 to 50 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 52 drivers have been authorized to drive a CMV in intrastate commerce, although their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging from 2 to 48 years. In the past 3 years, none of the drivers was involved in crashes and four were convicted for moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 8, 2014 notice (79 FR 38652).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes that it can properly apply the principle to monocular drivers because data from the Federal Highway Administration's (FHWA)

former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 52 applicants, none of the drivers was involved in crashes and four were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairments demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 52 applicants listed in the notice of July 8, 2014 (79 FR 38652).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 52 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received two comments in this proceeding. The comments are discussed below.

Gary Baumfalk, Herb Mattson, and Brenda Mattson are in favor of granting Ronnie L. Henry an exemption.

IV. Conclusion

Based upon its evaluation of the 52 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Don R. Alexander (OR)
Jimmy A. Baker (TX)
Robert E. Bebout (OH)
Frank B. Belenchia, Jr. (TN)
Ricky W. Bettes (TX)
Thomas J. Bommer (ND)
Antonio A. Calixto (MN)
James W. Carter, Jr. (KS)
Ronald G. Daniels (MO)
Larry G. Davis (TN)
Michael C. Doheny (CT)
William R. Evridge (KY)
George P. Ford (NC)
Lawrence A. Fox (WI)
Donald H. Fuller (NY)
Viktor V. Goluda (SC)
Todd M. Harguth (MN)
Dennis W. Helgeson (MN)
Ronnie L. Henry (KS)
Clarence K. Hill (NC)
James Holmes (GA)
Johnny L. Irving (MS)
Garfield J. Johnson (NC)
Kevin L. Jones (GA)
Michael L. Kautz (CA)
Keith A. Kelley (ME)
Stetson W. King (FL)
Bradley E. Loggins (AL)
Joe C. Mason (AR)
David L. Miller (OH)
Earl L. Mokma (MI)
Timothy W. Nappier (MI)
Donald L. Nisbet (WA)
Jace E. Nixon (IA)
Don R. Padley (MO)
David T. Perkins (NY)
Donald W. Rich (IL)
Joaquin C. Rodriguez (NM)
Harry W. Root (MN)
David A. Shaw (CA)
Kenneth C. Smith (MS)
Paul W. Sorenson (UT)
Randall H. Tempel (MT)
Christopher P. Thornby (MN)
Cory J. Tivnan (WA)
Melvin V. VanMeter (PA)
Kent J. VanRoekel (MN)
Wilbert Walden (NC)
Patrick J. Ward (NJ)
Ricky W. Witt (IA)
John D. Woods (MI)
Zachary J. Workman (ID)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–21427 Filed 9–8–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Twelve Individuals Pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of twelve individuals whose property and interests in property are blocked pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Pub. L. 112–208, December 14, 2012) (the "Magnitsky Act").

DATES: The designations by the Director of OFAC, pursuant to the Magnitsky Act, of the twelve individuals identified in this notice were effective on May 20, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On December 14, 2012, the President signed the Magnitsky Act. The Magnitsky Act requires the President to submit to certain congressional committees a list of each person the President has determined meets certain criteria set forth in the Magnitsky Act.

Pursuant to Section 406 of the Magnitsky Act, the President is required to block, with certain exceptions, all property and interests in property of a person who is on the list required by Section 404(a) of the Magnitsky Act that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person. The President delegated certain functions under the Magnitsky Act to the Secretary of the Treasury, in consultation with the Secretary of State, on April 5, 2013.

On May 20, 2014, the Director of OFAC designated, pursuant to Section 406 of the Magnitsky Act, twelve individuals whose property and interests in property are blocked pursuant to the Magnitsky Act.

The listings for these individuals on OFAC's List of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. ALISOV, Igor Borisovich; DOB 11 Mar 1968 (individual) [MAGNIT].
2. GAUS, Alexandra Viktorovna (a.k.a. GAUSS, Alexandra); DOB 29 Mar 1975 (individual) [MAGNIT].
3. KHLEBNIKOV, Vyacheslav Georgievich (a.k.a. KHLEBNIKOV, Viacheslav); DOB 09 Jul 1967 (individual) [MAGNIT].
4. KLYUEV, Dmitry Vladislavovich (a.k.a. KLYUYEV, Dmitriy); DOB 10 Aug 1967 (individual) [MAGNIT].
5. KRATOV, Dmitry Borisovich; DOB 16 Jul 1964 (individual) [MAGNIT].
6. KRECHETOV, Andrei Alexandrovich; DOB 22 Sep 1981 (individual) [MAGNIT].
7. LITVINOVA, Larisa Anatolievna; DOB 18 Nov 1963 (individual) [MAGNIT].
8. MARKELOV, Viktor Aleksandrovich; DOB 15 Dec 1967; POB Leninskoye village, Uzgenskiy District, Oshkaya region of the Kirghiz SSR (individual) [MAGNIT].
9. STEPANOV, Vladlen Yurievich; DOB 17 Jul 1962 (individual) [MAGNIT].
10. TAGIYEV, Fikret (a.k.a. TAGIEV, Fikhret Gabdulla Ogly; a.k.a. TAGIYEV, Fikhret); DOB 03 Apr 1962 (individual) [MAGNIT].
11. SUGAIPOV, Umar; DOB 17 Apr 1966; POB Chechen Republic, Russia (individual) [MAGNIT].
12. VAKHAYEV, Musa; DOB 1964; POB Urus-Martan, Chechen Republic, Russia (individual) [MAGNIT].

Dated: May 20, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 4, 2014.

[FR Doc. 2014–21388 Filed 9–8–14; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Justice

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, et al.
Disposal of Controlled Substances; Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, 1305, 1307, and 1317

[Docket No. DEA–316]

RIN 1117–AB18

Disposal of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This rule governs the secure disposal of controlled substances by registrants and ultimate users. These regulations will implement the Secure and Responsible Drug Disposal Act of 2010 by expanding the options available to collect controlled substances from ultimate users for the purpose of disposal, including: Take-back events, mail-back programs, and collection receptacle locations. These regulations contain specific language allowing law enforcement to voluntarily continue to conduct take-back events, administer mail-back programs, and maintain collection receptacles. These regulations will allow authorized manufacturers, distributors, reverse distributors, narcotic treatment programs (NTPs), hospitals/clinics with an on-site pharmacy, and retail pharmacies to voluntarily administer mail-back programs and maintain collection receptacles. In addition, this rule expands the authority of authorized hospitals/clinics and retail pharmacies to voluntarily maintain collection receptacles at long-term care facilities. This rule also reorganizes and consolidates previously existing regulations on disposal, including the role of reverse distributors.

DATES: *Effective Date:* This rule is effective October 9, 2014.

Compliance Date: All Memoranda of Agreement (MOAs) and Memoranda of Understanding (MOUs) issued pursuant to current 21 CFR 1307.21 will not be effective after October 9, 2014. Registrants may consult § 1317.05(a)(5) for information on requesting new MOAs and MOUs for disposal of controlled substances.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Outline

I. Executive Summary

A. Purpose of the Regulatory Action

On October 12, 2010, the Secure and Responsible Drug Disposal Act of 2010 (Disposal Act) was enacted (Pub. L. 111–273, 124 Stat. 2858). Before the Disposal Act, ultimate users who wanted to dispose of unused, unwanted, or expired pharmaceutical controlled substances had limited disposal options. The Controlled Substances Act (CSA) only permitted ultimate users to destroy those substances themselves (e.g., by flushing or discarding), surrender them to law enforcement, or seek assistance from the United States Drug Enforcement Administration (DEA). These restrictions resulted in the accumulation of pharmaceutical controlled substances in household medicine cabinets that were available for abuse, misuse, diversion, and accidental ingestion.

The Disposal Act amended the CSA to authorize ultimate users to deliver their pharmaceutical controlled substances to another person for the purpose of disposal in accordance with regulations promulgated by the Attorney General. 21 U.S.C. 822(g), 828(b)(3). This final rule implements regulations that expand the entities to which ultimate users may transfer unused, unwanted, or expired pharmaceutical controlled substances for the purpose of disposal, as well as the methods by which such pharmaceutical controlled substances may be collected. Specified entities may voluntarily administer any of the authorized collection methods in accordance with these regulations.

B. Summary of the Major Provisions of the Regulatory Action

The DEA is implementing new regulations for the disposal of pharmaceutical controlled substances by ultimate users in accordance with the Disposal Act. In drafting the implementing regulations, the DEA considered the public health and safety, ease and cost of program implementation, and participation by various communities. To this end, the DEA found that in order to properly address the disposal of controlled substances by ultimate users, it was necessary to conduct a comprehensive review of DEA policies and regulations related to each element of the disposal process, including the transfer, delivery, collection, destruction, return, and recall of controlled substances, by both registrants and non-registrants (i.e., ultimate users). The reverse distributor registration category, which is pertinent to the process of registrant disposal, was included in this comprehensive review. These regulations are incorporated into a new part 1317 on disposal. Definitions relating to the disposal of controlled substances are added to § 1300.05(b), including definitions for "employee," "law enforcement officer," "non-retrievable," and "on-site" and definitions relating to controlled substances generally are revised or added to § 1300.01.

The goal of this new part on disposal, consistent with Congress's goal in the Disposal Act, is to set parameters for controlled substance diversion prevention that will encourage public and private entities to develop a variety of methods for collecting and destroying pharmaceutical controlled substances in a secure, convenient, and responsible manner. Also, consistent with the Disposal Act's goal to decrease the amount of pharmaceutical controlled substances introduced into the environment, particularly into the water, these regulations provide individuals with various additional options to dispose of their unwanted or unused pharmaceutical controlled substances beyond discarding or

flushing the substances. As a result of these regulations, the DEA hopes that the supply of unused pharmaceutical controlled substances in the home will decrease, thereby reducing the risk of diversion or harm.

Ultimate User Disposal

An ultimate user is defined by the CSA as a "person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household." 21 U.S.C. 802(27). This rule provides three voluntary options for ultimate user disposal: (1) Take-back events, (2) mail-back programs, and (3) collection receptacles. Individuals lawfully entitled to dispose of an ultimate user decedent's property are authorized to dispose of the ultimate user's pharmaceutical controlled substances by utilizing any of the three disposal options. All of the collection methods are voluntary and no person is required to establish or operate a disposal program. The rule also does not require ultimate users to utilize any of these three methods for disposal of controlled substances. Although the three methods of disposal allowed by this rule seek to help protect the environment and prevent controlled substances from being diverted to illicit uses, this rule does not prohibit ultimate users from using existing lawful methods.

The DEA regulations provide specific language that will continue to allow Federal, State, tribal, and local law enforcement to maintain collection receptacles at the law enforcement's physical location; and either independently or in partnership with private entities or community groups, to voluntarily hold take-back events and administer mail-back programs. 21 CFR 1317.35. Thus, ultimate users will continue to be able to surrender their unwanted pharmaceutical controlled substances to law enforcement.

The DEA is also authorizing certain registrants (manufacturers, distributors, reverse distributors, narcotic treatment programs (NTPs), hospitals/clinics with an on-site pharmacy, and retail pharmacies) to be "collectors," with authorization to conduct mail-back programs. 21 CFR 1317.40 and 1317.70. All registrants that choose to establish mail-back programs must provide specific mail-back packages to the public, either at no cost or for a fee, 21 CFR 1317.70. Collectors that conduct mail-back programs must have and utilize an on-site method of destruction to destroy returned packages, 21 CFR 1317.05.

These DEA regulations authorize collectors to maintain collection receptacles at their registered location. 21 CFR 1317.40. Thus, ultimate users will be able to carry their unwanted pharmaceutical controlled substances to an authorized retail pharmacy or other authorized collector location and deposit those controlled substances in a secure container for disposal. Hospitals/clinics and retail pharmacies that are authorized to be collectors may also maintain collection receptacles at long-term care facilities (LTCFs). 21 CFR 1317.40. LTCFs may dispose of pharmaceutical controlled substances on behalf of an ultimate user who resides, or has resided, at that LTCF, 21 CFR 1317.80, through a collection receptacle that is maintained by an authorized hospital/clinic or retail pharmacy at that LTCF. 21 CFR 1317.40 and 1317.80.

With this rule, the DEA allows all pharmaceutical controlled substances collected through take-back events, mail-back programs, and collection receptacles to be comingled with non-controlled substances, although such comingling is not required. 21CFR 1317.65, 1317.70, and 1317.75. Pharmaceutical controlled substances collected by collectors may not be individually counted or inventoried. 21 CFR 1317.75. This rule also imposes various registration, security, and recordkeeping requirements.

The DEA appreciates there is a cost to entities that choose voluntarily to provide these methods of collection and destruction. The DEA acknowledges that some State and local pharmaceutical disposal programs receive funding and other support from numerous sources, including conservation groups, local governments, State grants, and public and private donations. These expanded methods of disposal are expected to benefit the public by decreasing the supply of pharmaceutical controlled substances available for misuse, abuse, diversion, and accidental ingestion, and protect the environment from potentially harmful contaminants by providing alternate means of disposal for ultimate users. However, other advantages may accrue directly to those entities that opt to maintain a disposal program. For example, those authorized registrants that choose to maintain collection receptacles may be enhanced by the increased consumer presence at their registered locations and the goodwill that develops from providing a valuable community service. In addition, mail-back program collectors may partner with third parties to make mail-back packages available to the public. Those authorized registrants that choose to administer mail-back programs may gain from the opportunity to distribute to consumers promotional, educational, or other informational materials with the mail-back packages.

DEA Registrant Disposal

The DEA has deleted the existing rule related to registrant disposal, 21 CFR 1307.21, and incorporated similar requirements on proper disposal procedure and security in a new part 1317 on disposal. These changes provide consistent disposal procedures for each registrant category, regardless of geographic location. In addition, the DEA has modified DEA Form 41 and is explicitly requiring that form to be used to record the destruction of controlled substances that remain in the closed system of distribution and also to account for registrant destruction of pharmaceutical controlled substances collected from ultimate users and other non-registrants pursuant to the Disposal Act. As stated in the NPRM, a controlled substance dispensed for immediate administration pursuant to an order for medication in an institutional setting remains under the custody and control of that registered institution even if the substance is not fully exhausted (*e.g.*, some of the substance remains in a vial, tube, transdermal patch, or syringe after administration but cannot or may not be further utilized, commonly referred to as "drug wastage" and "pharmaceutical wastage"). Such remaining substance must be properly recorded, stored, and destroyed in accordance with DEA regulations (*e.g.*, § 1304.22(c)), and all applicable Federal, State, tribal, and local laws and regulations, although the destruction need not be recorded on a DEA Form 41.

Reverse Distributors

The DEA is providing regulations for entities that reverse distribute that are clear and consistent. Entities that reverse distribute are often the last registrant to possess controlled substances prior to destruction; however, the recordkeeping safeguards that exist when controlled substances are distributed between registrants are not present when these registrants destroy controlled substances. Because reverse distributors routinely acquire controlled substances for destruction from other registrants and may also be authorized as collectors, reverse distributors accumulate greater amounts of controlled substances that are destined for destruction in comparison to other registrants. The DEA is defining "reverse distribute;" revising the definition of "reverse distributor;" (21

CFR part 1300) outlining security (21 CFR part 1301), inventory, recordkeeping requirements, and other procedures that reverse distributors must follow to acquire controlled substances from registrants and to destroy such acquired substances. 21 CFR part 1304. The DEA also is clarifying that these security, inventory, and recordkeeping requirements apply to certain specified entities that reverse distribute but are not registered as reverse distributors. *See, e.g.,* 21 CFR 1304.11(e)(3) ("each person registered or authorized to reverse distribute"). The DEA believes that these regulations will help all registrants that reverse distribute comply with the CSA in a manner that decreases the risk of the diversion of controlled substances during the disposal process.

Return and Recall

This rule removes the existing regulation on return and recall, 21 CFR 1307.12, and incorporates separate return and recall requirements for registrants and non-registrants into new §§ 1317.10 and 1317.85. This rule also imposes various recordkeeping requirements pertaining to controlled substances acquired for the purpose of return or recall in §§ 1304.22 and 1305.03. The DEA has simplified the requirements of § 1317.10(a) to more clearly describe the records that registrants must keep.

Methods of Destruction

Existing DEA regulations do not specify a standard to which controlled substances must be destroyed. With this final rule, the DEA is implementing a standard of destruction—non-retrievable—for registrants that destroy controlled substances, and procedures for the destruction of controlled substances. 21 CFR 1300.05 ("non-retrievable"), 1317.90, and 1317.95. The DEA is not requiring a particular method of destruction, so long as the desired result is achieved. This standard is intended to allow public and private entities to develop a variety of destruction methods that are secure, convenient, and responsible, consistent with preventing the diversion of such substances. Destruction of controlled substances must also meet all other applicable Federal, State, tribal, and local laws and regulations. Once a controlled substance is rendered "non-retrievable," it is no longer subject to the requirements of the DEA regulations.

As explained above under "Compliance Date," this final rule supersedes all existing MOAs and MOUs that registrants may have pursuant to § 1307.21, including MOAs and MOUs pertinent to storage of controlled substances. The DEA retains in the new part 1317 the ability for practitioners to request assistance from the local Special Agent in Charge (SAC) regarding the disposal of controlled substances. 21 CFR 1317.05. Practitioners may request a new MOA or MOU pursuant to the new § 1317.05(a)(5).

C. Summary of the Changes in the Final Rule

The DEA carefully considered the 192 individually-submitted comments received in response to the Notice of Proposed Rulemaking (NPRM) on the Disposal of Controlled Substances.[1] 77 FR 75784, Dec. 21, 2012. The comment period closed on February 19, 2013. The DEA is making a number of significant changes after thorough consideration of the issues raised by the comments and the potential diversion risks associated with these changes.

In response to concerns regarding ultimate users' ability to have convenient disposal options, the DEA is vastly expanding those entities that may be authorized as collectors, expanding the authority of those collectors to maintain collection receptacles at LCTFs, and relaxing some of the proposed security requirements related to storage and destruction of controlled substances.

Authorized Collectors

In addition to manufacturers, distributors, reverse distributors, and retail pharmacies, the final rule also authorizes registered NTPs, as well as hospitals/clinics with an on-site pharmacy, to operate disposal programs. 21 CFR 1317.40. By permitting these additional registrant categories to be collectors, the DEA anticipates that ultimate users will now have even more locations where they can securely, safely, responsibly, and conveniently dispose of their unwanted pharmaceutical controlled substances.

In this final rule, the DEA is permitting those entities registered as NTPs to become authorized collectors to manage collection receptacles at their registered locations. As stated in the Disposal Act, "the nonmedical use of prescription drugs is a growing problem in the United States." Multiple commenters, including a national organization that represents NTPs, recommended that the DEA include NTPs as authorized collectors. The DEA recognizes the valuable role that NTPs have in helping those seeking substance abuse treatment. After considering the importance of providing secure, convenient, and responsible disposal options for those ultimate users currently receiving treatment for narcotic substance abuse or entering a narcotic treatment program, and the benefits of allowing NTPs to provide the opportunity to patients to dispose of unused controlled substances, the DEA is permitting NTPs to be collectors with certain enhanced security controls. 21 CFR 1317.75.

Due to the nature of the healthcare provided, NTPs face unique security challenges and heightened diversion risks and, as such, the final rule requires NTPs to securely place and maintain collection receptacles in a room that does not contain any other controlled substances and is securely locked with controlled access. 21 CFR 1317.75. The DEA understands that this security measure will require employees of the NTP to accompany the patient to the collection receptacle to facilitate the patient's disposal. *See* 21 CFR 1317.75. Additionally, as the Disposal Act and these regulations are intended to address the *prescription* drug abuse problem, NTPs and other collectors are not authorized to collect schedule I controlled substances. *E.g.,* 21 CFR 1317.75. Collectors must be vigilant in ensuring that such illicit substances are not collected intentionally or inadvertently. *E.g.,* 21 CFR 1317.70 and 1317.75.

After extensive review and careful deliberation, in this final rule, the DEA is also permitting registered hospitals/clinics with an on-site pharmacy to become authorized collectors to maintain collection receptacles inside their registered locations or at LTCFs, and to conduct mail-back programs. 21 CFR 1317.30, 1317.40, 1317.70, and 1317.80. In response to the NPRM, many commenters stated that collection receptacles located inside of hospitals would provide ultimate users with an opportunity to dispose of medication that may no longer be needed or may be expired. In determining whether to allow hospitals/clinics to become authorized collectors, the DEA carefully weighed the diversion risks with the convenience of authorizing such entities to be collectors. The DEA determined that the diversion risks require the DEA to limit those registered hospitals/clinics that may become collectors to those with on-site pharmacies, and also impose separate security conditions on the monitoring and location of collection receptacles inside hospitals/

[1] All of the comments submitted, except two comments, are available for public inspection online at *www.regulations.gov.* Two comments are not posted (at the commenters' request) in order to protect confidential business information.

clinics that become authorized collectors. 21 CFR 1317.75.

The DEA is requiring these additional security measures in order to help protect against the diversion of collected controlled substances because hospitals/clinics are generally much larger and are open to a much larger general population than the other registrants authorized to be collectors; and, as discussed in the NPRM, hospitals/clinics do not operate under the same business model or with similar theft and loss prevention procedures as the other registrants authorized to become collectors. For example, the general public typically enters retail pharmacies for short durations in order to conduct retail business and retail pharmacies generally have open, clearly observable common areas with little opportunity to conceal an unlawful purpose. It would be unusual and suspicious for a person to spend an extended amount of time in a retail pharmacy without a known, specific purpose, triggering routine theft and loss prevention measures.

In contrast, hospitals are generally open 24-hours per day and allow for unsupervised public access for extended periods of time; they are much larger than retail pharmacies and many interactions occur behind closed doors without routine theft and loss prevention measures; and foot traffic generally is not routinely monitored for unlawful purposes. The DEA believes that limiting authorized collection activities to hospitals/clinics with an on-site pharmacy is necessary to help protect against diversion because these hospitals/clinics routinely handle a large volume of controlled substances that are dispensed to in-patients as well as to the public, and these entities are more experienced with security, theft and loss prevention procedures, and inventory, recordkeeping and reporting requirements than those hospitals/clinics without an on-site pharmacy.

For reasons discussed in the NPRM, this final rule generally requires that, when authorized collectors choose to install collection receptacles, those collection receptacles must be placed inside their registered locations in the immediate proximity of a designated area where controlled substances are stored and at which an employee is present. 21 CFR 1317.75; *see also* 1317.05. The DEA recognizes that hospitals/clinics with an on-site pharmacy can be unique in their design and it may be more effective to install collection receptacles at various locations within the hospital/clinic, depending on factors such as security, convenience, and accessibility. As such, it would be challenging for authorized hospitals/clinics to adhere to the general rule to place collection receptacles in the immediate proximity of where controlled substances are stored and at which an employee is present. Accordingly, the DEA is requiring hospitals/clinics that are collectors to place collection receptacles in locations that are regularly monitored by employees. 21 CFR 1317.75. In addition, the DEA is prohibiting such collectors from placing collection receptacles in the proximity of any area where emergency or urgent care is provided. In the DEA's experience, the risk of diversion is particularly high in areas where emergency or urgent care is provided because of the often chaotic environment and the extended amounts of time persons spend in such areas.

This rule also makes clear that DEA registrants cannot use the collection receptacles to dispose of unused controlled substances in their inventory or stock. 21 CFR 1317.05 and 1317.75. Pharmaceutical controlled substances remain under the custody and control of the DEA registrant if they are dispensed by a practitioner for immediate administration at the practitioner's registered location (such as a hospital) pursuant to an order for medication. If that substance is not fully exhausted (*e.g.*, some of the substance remains in a vial, tube, or syringe after administration but cannot or may not be further utilized), then the DEA registrant is obligated to destroy the remaining, unusable controlled substances, and record the destruction in accordance with § 1304.22(c). The DEA registrant shall not place such remaining, unusable controlled substance in a collection receptacle as a means of disposal. Hospital/clinic staff must also not dispose of any controlled substances in inventory or stock in a collection receptacle.

The security requirements described above are the minimum required in order to detect and prevent diversion in the unique circumstances of NTPs and hospitals/clinics. These registrants should be vigilant in the execution of their responsibilities as registrants to ensure that collected controlled substances are not diverted to illicit use, and that they do not collect illicit substances. Finally, all registrants are reminded of the responsibility to report theft and significant loss of controlled substances within one business day of discovery.

Long-Term Care Facilities (LTCFs)

Significant changes are made in this final rule to help ensure that LTCFs have adequate disposal options. In addition to allowing retail pharmacies to manage and maintain collection receptacles at LTCFs, the DEA is also allowing hospitals/clinics with an on-site pharmacy to manage and maintain collection receptacles at LTCFs. The DEA hopes that expanding those authorized to collect at LTCFs will maximize disposal opportunities for LTCF residents.

In addition, the DEA is alleviating two security requirements proposed to apply to collection receptacles located at LTCFs. First, the DEA is permitting authorized hospitals/clinics and retail pharmacies to store inner liners that have been sealed upon removal from a collection receptacle at LTCFs in a securely locked, substantially constructed cabinet or a securely locked room with controlled access for up to three business days until the liners can be transferred for destruction. The DEA encourages collectors to schedule inner liner removals and installations to coincide with existing LTCF visits when possible, for example, arranging a routine system in which medication deliveries coincide with the removal and transfer of sealed inner liners for appropriate destruction, thereby making storage of sealed inner liners unnecessary. Collectors may not transfer sealed inner liners from LTCFs to their primary registered location (i.e., the hospital/clinic or retail pharmacy location). As echoed in the comments, the DEA remains concerned about the security risks of hospital/clinic and retail pharmacy employees transporting large quantities of collected substances, making them potential targets for drug seekers. Instead, collectors should deliver sealed inner liners to a reverse distributor or distributor's registered location by common or contract carrier pick-up or by reverse distributor or distributor pick-up at the LTCF, pursuant to § 1317.05(c)(2)(iv).

Second, the DEA relaxed the two-employee integrity requirement for inner liner installation, removal, storage, and transfer at LTCFs. Collectors will retain the option to authorize two of their own employees to install, remove, store, and transfer inner liners; however, the DEA is permitting collectors the option to designate a supervisor-level employee of the LTCF (*e.g.*, a charge nurse, supervisor, or similar employee) to install, remove, store, or transfer inner liners with only one employee of the collector.

The DEA modified the above security requirements (storage and two-person integrity) to provide flexibility sufficient to encourage authorized hospitals/clinics and retail pharmacies to collect at LTCFs, while ensuring the minimum protections required to prevent

diversion at LTCFs. The DEA hopes that the inclusion of certain hospitals/clinics as authorized to maintain collection receptacles at LTCFs, and the modifications described above will result in expanded safe and secure disposal options for LTCF residents. The DEA emphasizes that if LTCFs dispose of LTCF residents' controlled substances in collection receptacles, such activity must be in accordance with this regulation and all other applicable Federal, State, tribal and local laws and regulations, including environmental laws and regulations.

The DEA acknowledges that there may be some LTCFs that will not have a collection receptacle, and there will be instances where LTCF residents are incapable of disposing of their own unused or unwanted medication. As ultimate users, LTCF residents may use any of the disposal options afforded other ultimate users in this final rule (e.g., mail-back programs), in addition to the disposal options currently available to ultimate users (e.g., flushing or otherwise discarding) that will remain options even after this final rule is implemented. For example, an LTCF resident may request that LTCF personnel place the resident's unwanted medication in a mail-back package, seal the mail-back package, and deposit that package into the facility's outgoing mail system. 21 CFR 1317.70. LTCFs should be mindful however that the touchstone for this disposal method is the individual nature of the disposal activity; institutional facilities such as LTCFs should ensure that the individual patient is the disposer, and should be wary of establishing any protocols whereby the facility itself is engaging in collection activities. Simply providing the method of disposal (e.g., mail-back packages) does not implicate that concern.

Destruction

After careful and thorough consideration of comments received regarding the burdens associated with the proposed 14-day destruction requirement, the DEA is extending the time those registrants that reverse distribute have to destroy controlled substances to 30 days. 21 CFR 1317.15(d). The DEA anticipates that this extension will allow reverse distributors and distributors adequate time to collect and destroy controlled substances in a safe, convenient, and secure manner, while also preventing diversion and diversion opportunities.

Practitioner Physical Security

In this final rule, the DEA is not amending § 1301.75(b) pertaining to practitioner physical security and is instead adding a new paragraph (c) to clarify that practitioners shall only store sealed mail-back packages and inner liners containing collected substances at their registered location in a securely locked, substantially constructed cabinet or a securely locked room with controlled access. The DEA has made corresponding changes to §§ 1317.05(c)(1)(ii) and (c)(2)(ii). Part of this requirement was included in the proposed rule; however, after careful consideration of a number of comments, the DEA believes that the proposed requirement did not provide sufficient controls to protect against diversion and was impracticable. Pharmacies and institutional practitioners cannot store sealed inner liners or returned mail-back packages by dispersing them throughout the stock of noncontrolled substances. 21 CFR 1301.75(b) and (c).

Other Changes to the Final Rule

In addition to the changes described above, the DEA determined that the rule, as proposed, required other modifications, as generally described below. The DEA is also implementing additional technical modifications that will not have a substantive effect on this rule (e.g., relocating some sections in proposed part 1317 to other sections within title 21 of the CFR, re-phrasing some sections from the proposed rule to be simpler, clearer and easier to understand, and eliminating redundancy).

In the general definitions section of the DEA regulations, the DEA is amending § 1300.01(b) to be clear that the definitions that generally apply to most other parts of chapter II of title 21 of the CFR also apply to part 1317. In response to a number of comments, in § 1300.01(b) the DEA is amending the definition of "reverse distributor" to clarify that a reverse distributor is a person registered with the DEA as a reverse distributor.

Definitions were moved from § 1317.02 to § 1300.05 to provide consistency within the CFR pertaining to definitions. The DEA adds § 1300.05 "Definitions relating to the disposal of controlled substances," moves the terms "authorized employee," "law enforcement officer," and "non-retrievable" from part 1317 to § 1300.05(b), adds a definition of "on-site" to § 1300.05(b), and deletes the definitions of "for cause" and "inner liner" that were in proposed part 1317. The DEA also moves the definition of "collection" to § 1300.01(b). These changes are in response to comments or related to the movement of several other requirements from part 1317 to other parts, as discussed below.

In addition to moving them to § 1300.05(b), the DEA amends the definitions of "authorized employee" and "law enforcement officer." The DEA is omitting the word "authorized" from the definition of "authorized employee," and codifying the definition of "employee" in harmony with the general common law of agency. The DEA is modifying the definition of "law enforcement officer" in part 1317 to specifically include officers from law enforcement components of Federal agencies, and authorized police officers of the Veterans Health Administration and the Department of Defense. In addition, this rule clarifies who may qualify as a "law enforcement officer" for the purpose of disposal. The DEA is changing references to "law enforcement agencies" to "law enforcement" in order to include law enforcement components of Federal agencies.

Although the DEA defined "inner liner" in the NPRM, the final rule does not amend the CFR to add a definition for inner liner. As described below, inner liners used in the collection of controlled substances must meet the specifications outlined in § 1317.60. The DEA also is not amending the CFR to add a definition of "for cause," and instead is providing an explanation of "for cause" as it relates to the sections to which it applies.

The DEA added a definition of "on-site" to § 1300.05(b) to clarify that "on-site" means "located on or at the physical premises of the registrant's registered location" for purposes of destruction and registration as a collector. Specifically, a controlled substance is destroyed "on-site" when destruction occurs on the physical premises of the destroying registrant's registered location, and a hospital/clinic has an "on-site" pharmacy when it has a pharmacy located on the physical premises of the registrant's registered location.

Text was added to the registration table in § 1301.13 to reflect that distributors, as a coincident activity to distribution, may acquire controlled substances from collectors for the purpose of destruction. The registration table was updated so that it would be consistent with the regulations in the final rule, which authorize distributors to destroy controlled substances acquired from collectors.

The DEA received a number of comments indicating confusion regarding the procedures a registrant must follow to modify their DEA registration to become a collector. In

order to clarify such requirements, the DEA is further revising § 1301.51. The additional revisions clarify the requirements by listing them independently of other types of registration modifications (e.g., change of name or address) and clearly indicating that any modifications may be made in writing by mail or online. 21 CFR part 1301. Also, the submission method has been modified from "letter" to "written request" to accurately encompass the various ways the modification request may be submitted (e.g., online), and the phrase "to be paid" was deleted from § 1301.51(c) for stylistic reasons. Similarly, the DEA is further revising § 1301.52 to clarify that any registrant who has been authorized as a collector and who desires to discontinue their collection of pharmaceutical controlled substances from ultimate users must notify the DEA.

The DEA is also streamlining certain registration and security procedures by moving certain requirements from part 1317, as proposed in the NPRM, to part 1301. Reverse distributor employee security requirements in proposed § 1317.20 were moved to § 1301.74(m) for ease of reference and consistency. Collector security requirements in proposed § 1317.45 were moved to § 1301.71(f) for clarity and consistency.

The DEA determined that inclusion of recordkeeping and reporting requirements in part 1317 may lead to confusion among registrants. As such, the DEA is moving all recordkeeping and reporting requirements from part 1317, as proposed in the NPRM, to part 1304—Records and Reports of DEA Registrants—in order to maintain consistency and consolidate all recordkeeping and reporting requirements into one part. In § 1304.03, "each" was changed to "every," and "who" was changed to "that" for stylistic reasons. In § 1304.11(e)(2), the first sentence, pertaining to an exception for reverse distributors, was removed and incorporated into § 1304.11(e)(3) of the final rule to accurately reflect the type of registrants to which the section applies.

The DEA is expanding the locations where a collector may maintain records in § 1304.04(a)(3). The text in § 1304.21(a) was updated to specifically include inner liners and mail-back packages, which were inadvertently overlooked in the NPRM. 21 CFR § 1304.21(c) was updated to include the general recordkeeping requirements for collection activities as outlined in the final rule. The recordkeeping requirements for disposal of controlled substances in 21 CFR § 1307.21 were moved to § 1304.21(e) and amended to include recordkeeping procedures for destruction. The title and introductory text in § 1304.22 were updated to accurately reflect their contents. Additionally, § 1304.22 was modified to include recordkeeping requirements for collected controlled substances. The second sentence in both § 1304.25(a)(9) and § 1304.25(b)(9), which required compliance with part 1317 when destroying narcotic controlled substances, were removed as superfluous. All disposal and destruction activities are clearly delineated in part 1317. Also, various Automation of Reports and Consolidated Ordering System (ARCOS) requirements are removed from part 1317, as proposed in the NPRM, and are consolidated and moved to § 1304.33. In addition, the title of § 1304.33 has been changed to add clarity, and the acronym "ARCOS" is clearly spelled out. The formatting for § 1304.33(f) was modified for ease of understanding, and "who" was changed to "that" in two locations for consistency.

The DEA is also amending § 1305.03 to add a new paragraph (f) to clarify that collectors are exempt from order form requirements for pharmaceutical controlled substances collected through mail-back programs and collection receptacles for the purpose of disposal. The title of § 1307.11 no longer references reverse distributors and has been changed to "Distribution by dispenser to another practitioner" because reverse distributor activities were moved to part 1317.

As discussed in the preamble to the NPRM and as mentioned in proposed § 1317.100, the DEA clarifies in § 1304.21 of this final rule that, in addition to any other recordkeeping requirements, all registrants that destroy or cause the destruction of a controlled substance must maintain a record of that destruction on a DEA Form 41. This requirement had been discussed in the preamble to the proposed rule, and in proposed § 1317.100 the DEA stated "any registered person that destroys or causes the destruction of a controlled substance shall maintain a record of destruction on a form issued by DEA . . .." The DEA has determined that this requirement to keep such records on DEA Form 41 should be explicitly stated in the regulatory text, and not just the preamble, for registrants to clearly understand the requirements to which they are bound. As stated above, this requirement to record destruction activities on the DEA Form 41 does not apply to drug wastage or pharmaceutical wastage which must be properly recorded, stored, and destroyed in accordance with DEA regulations, and all applicable Federal, State, tribal, and local laws and regulations. 21 CFR part 1304.

The DEA is modifying proposed § 1317.70 to address the procedures that a collector must follow when ceasing operation of a mail-back program. This modification requires such collector to make reasonable efforts to notify the public of their intent to cease mail-back collection activities. 21 CFR 1317.70. Such collector must also establish an agreement with another collector authorized to conduct a mail-back program to receive all remaining packages and arrange for the forwarding of such packages to the second collector's registered location. These procedures will ensure that another authorized entity will be responsible for receiving and destroying any mail-back packages that were disseminated but not received back by the collector prior to the time that they ceased operation of their mail-back program.

Finally, the DEA is modifying proposed § 1317.75 for two purposes. The first modification clarifies that collected controlled and non-controlled substances can be comingled, but are not required to be comingled. 21 CFR 1317.75. As previously discussed, the second modification to this section allows certain LTCF employees, as designated by the collector authorized to maintain a collection receptacle at that LTCF, to install, seal, remove, store, and transfer for destruction the inner liners of the collection receptacle along with an employee of the collector. 21 CFR 1317.80. This modification allows greater flexibility for collectors authorized to maintain collection receptacles at LTCFs.

II. Background and Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, but are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for a sufficient supply of controlled substances and listed

chemicals for legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety. To this end, controlled substances are classified into one of five schedules based upon: The potential for abuse, currently accepted medical use, and the degree of dependence if abused. 21 U.S.C. 812. Listed chemicals are separately classified as list I or list II chemicals based on their use and importance to the manufacture of controlled substances. 21 U.S.C. 802(33)–(35).

The CSA establishes a closed system of distribution that requires the DEA to monitor and control the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals until they reach their final lawful destination. The secure destruction of unused, recalled, tainted, expired, or otherwise unwanted pharmaceutical controlled substances is essential to preventing the diversion of these substances into the illicit market.

In order to maintain this closed system of distribution, persons who handle (manufacture, distribute, dispense, import, export, engage in research, or conduct instructional activities), or propose to handle, controlled substances and listed chemicals are required to register with the DEA at each principal place of business or professional practice. Persons registered with the DEA are permitted to possess controlled substances and listed chemicals as authorized by their registration and must comply with the applicable requirements associated with their registration. 21 U.S.C. 822.

Not all persons who possess controlled substances are required to register with the DEA. For example, a patient who receives a pharmaceutical controlled substance pursuant to a lawful prescription, i.e., an ultimate user, is not required to register with the DEA in order to receive and possess that substance. 21 U.S.C. 822(c)(3); *see also* 21 U.S.C. 957(b)(1)(C).[2] The CSA defines an "ultimate user" as "a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household." 21 U.S.C. 802(27).

While Congress envisioned a closed system of distribution that would control a substance from its manufacture or import through the traditional chain of distribution moving from registrant to registrant until it reached its final lawful use (e.g., dispensed to the ultimate user, etc.), it did not account for circumstances in which pharmaceutical controlled substances were lawfully dispensed to, and possessed by, an ultimate user but not fully used. Although ultimate users are exempt from CSA registration requirements for the possession of pharmaceutical controlled substances, if they distribute (e.g., deliver or transfer) such substances without the appropriate registration, they are in violation of the CSA.[3] Such unlawful distribution includes the transfer of pharmaceutical controlled substances for the purpose of disposal.[4]

The Disposal Act, enacted on October 12, 2010, amended the CSA to allow an ultimate user to "deliver" a pharmaceutical controlled substance "to another person for the purpose of disposal" if the person receiving the substance is authorized to receive it and the disposal takes place in accordance with regulations issued by the Attorney General to prevent the diversion of controlled substances. 21 U.S.C. 822(g)(1). The Attorney General delegated responsibility for promulgating the Disposal Act implementing regulations to the DEA.[5]

In addition to authorizing ultimate users to deliver their pharmaceutical controlled substances to another person for the purpose of disposal, the Disposal Act also authorizes any person lawfully entitled to dispose of an ultimate user decedent's property to deliver the ultimate user's pharmaceutical controlled substances to another person for the purpose of disposal if the ultimate user dies while in lawful possession of the substances. The Disposal Act also gives the DEA the ability, by regulation, to authorize LTCFs to dispose of pharmaceutical controlled substances on behalf of ultimate users who reside, or have resided, at the LTCF. Congress directed the DEA, in promulgating the Disposal Act implementing regulations, to consider the public health and safety, ease and cost of program implementation, and participation by various communities. The implementing regulations may not *require* any person to establish or operate a delivery or disposal program.

III. Discussion of Comments

The DEA had received 192 comments on the NPRM when the comment period closed on February 19, 2013. These comments are summarized below, along with the DEA's responses.

A. Support for the Proposed Rule (1 Issue)

[1] Issue: The DEA received 192 comments for this rulemaking during the 60-day comment period. The vast majority of the comments were overwhelmingly positive with the commenters agreeing that there should be more options for secure, convenient, and responsible disposal of controlled substances. Nineteen commenters supported the rule as written in the NPRM. Almost every other commenter supported the rule to some degree, although many commenters had concerns with the implementation of the specific disposal procedures described in the NPRM.

Response: The DEA appreciates the support for this rulemaking and is privileged to implement regulations to allow for the collection and disposal of controlled substances in a secure, convenient, and responsible manner. The DEA considered all of the comments and ramifications of implementing proposed changes to the rule. In finalizing this rule, the DEA

[2] 21 U.S.C. 822(c)(3) and 957(b)(1)(C) except "ultimate users" who possess substances for purposes referenced in 21 U.S.C. 802(25); however, "ultimate user" is defined in 21 U.S.C. 802(27).

[3] It is unlawful to knowingly or intentionally manufacture, distribute, dispense, or possess with the intent to manufacture, distribute, or dispense, a controlled substance without the appropriate registration. 21 U.S.C. 841(a).

[4] The terms "disposal," "dispose," or "disposition" appear several times in the CSA and its implementing regulations, but are not defined. For example, in the CSA, see 21 U.S.C. 822(g); 824(f)–(g); 826(c), (e)–(f); 827(a)(3), (d)(1); 842(a)(7); 853(n); 880(a)(2); 881(e)(1); 958(d)(6); and in the CFR, see 21 CFR 1307.21(b) and 1304.22(a)(2)(ix). The term "net disposal," however, is defined at 21 CFR 1300.01(b). As used, the terms refer to a variety of activities that ultimately result in eliminating the availability of controlled substances for use. For example, within the meaning of the CSA, a controlled substance can be "disposed of" by destruction, return, recall, sale, or through the manufacturing process. The Disposal Act allows an ultimate user to deliver a lawfully obtained controlled substance to another person "for the purpose of disposal." The DEA believes that the ultimate user disposal authorized by the Disposal Act includes the transfer or delivery of controlled substances for purposes of destruction, return, and recall. Such ultimate user activities are consistent with the intent to remove unused, unwanted, tainted, and expired substances from households and out of the reach of children and teenagers thereby reducing the risk of diversion and protecting the public health and safety. As used in this Final Rule, the DEA uses the terms "disposal" and "dispose" to generally refer to the wide range of activities that result in controlled substances being unavailable for further use. When necessary to specify a particular activity within the disposal process, the particular activity is identified (e.g., transfer, deliver, collect/collection, return, recall, and destroy/destruction).

[5] The Attorney General's delegation of authority to the DEA may be found at 28 CFR 0.100.

considered public health and safety, ease and cost of program implementation, and participation by various communities.

B. Definitions and Terms[6] *(12 Issues)*

[1] Issue: Five commenters asked the DEA to define "ultimate user."

Response: An ultimate user is defined by the CSA as "a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household." This definition, codified at 21 U.S.C. 802(27), was not amended or otherwise modified by the Disposal Act.

[2] Issue: Ten commenters asked the DEA to clarify the term "retail pharmacy" and to specify whether "closed-door pharmacies," such as those that service LTCFs, "Federal pharmacies," and other pharmacies that only provide services to a distinct population are considered retail pharmacies.

Response: The intended meaning of "retail pharmacy" with regard to collectors was discussed in the NPRM but was not defined in the proposed rule itself. The DEA intends "retail pharmacy" to include any entity registered with the DEA as a retail pharmacy as opposed to those entities registered as a hospital/clinic. Depending on a variety of factors, including State authority and authorized business practices, some entities that dispense controlled substances may be registered with the DEA as either a retail pharmacy or a hospital/clinic. 21 CFR part 1301. In other words, pharmacies are not registered with the DEA as "Federal pharmacies," "LTCF pharmacies," or even "closed-door pharmacies." All of these pharmacies may be registered as retail pharmacies provided they meet the requirements of 21 U.S.C. 822 and 823, and they may be authorized as collectors upon proper application. As previously discussed, the DEA is also allowing entities registered as hospitals/clinics with an on-site pharmacy to be collectors. 21 CFR 1317.40. Therefore, patients of pharmacies that dispense controlled substances pursuant to a hospital/clinic registration may benefit if the hospital/clinic opts to modify its registration to become a collector.

[3] Issue: Approximately 10 commenters asked the DEA to expand the definition of "authorized employee." These commenters expressed concern that the definition of "authorized employee" in the NPRM was too limited in scope, and would result in a burden on smaller-staffed pharmacies, as well as pharmacies that employ contract pharmacists and part-time employees. One commenter asked whether or not physician-owners will be considered authorized employees.

Response: The DEA carefully considered the commenters' concerns and is modifying the proposed definition of "authorized employee." 21 CFR § 1300.05(b). In this rule, the DEA is omitting the word "authorized" from the definition of "authorized employee" because the rule already specifies what conditions qualify employees to conduct certain disposal activities (i.e., authorized collectors may not employ, as an agent or employee who has access to or influence over collected substances, any person who has been convicted of a felony offense related to controlled substances or who has, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended, or surrendered a DEA registration for cause). Also, the DEA is modifying the definition of "employee" by adopting the general common law of agency's definition of the term and moving the definition from proposed part 1317 to part 1300. As a result of these changes, part-time personnel and physician-owners may be considered "employees" for the purpose of disposal if they meet the relevant criteria.

Where Congress does not define "employee," the DEA utilizes the common law to determine who is an "employee." Under U.S. Supreme Court precedent, the factors relevant to determining whether a person is an "employee" under the common law include, but are not limited to: The hiring party's right to control the manner and means by which the product is accomplished; the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. *See Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323–24 (1992). Other applicable factors may be considered and no one factor is dispositive. *See id.* at 324.

After evaluating the relevant factors in the context of controlled substance security and diversion prevention, in the context of disposal, the following criteria will determine whether a person is an "employee" regardless of the number of hours per week the person works: Persons who are directly paid by the registrant; who are subject to direct oversight by the registrant; who are required, as a condition of employment, to follow the registrant's procedures and guidelines pertaining to the handling of controlled substances; who receive a performance rating or performance evaluation on a regular/routine basis from the registrant; who are subject to disciplinary action by the registrant; and who render services at the registrant's registered location. This definition is incorporated in the new § 1300.05, titled "Definitions Relating to the Disposal of Controlled Substances." These criteria focus on the degree of management and control that a registrant has over the person, and thus, adherence to these criteria will directly impact the security of controlled substances within the registrant's custody and control. The DEA believes that these criteria are the minimum required to ensure controlled substances are accounted for and not diverted to illicit purposes. Under the definition, contract personnel who do not meet these criteria are not "employees" for the purposes of disposal.

[4] Issue: One commenter stated that the proposed definition of "authorized employee" was too expansive, and that controlled substances should be handled only by individuals who hold a professional license.

Response: The DEA carefully considered the diversion risks associated with allowing various types of persons to handle collected substances. The definition of "employee," as stated in this final rule, will help reduce diversion risks while ensuring that authorized collectors have sufficient ability to safely and securely manage the collection of controlled substances. 21 CFR part 1300. Individuals who do not hold a professional license are considered "employees" if they meet the criteria as explained above.

[5] Issue: Five commenters asked the DEA to define the term "common or contract carrier."

Response: The DEA declines to define this term for the purpose of this rule. The DEA's primary concern regarding common or contract carriers is not about how these terms are defined, but whether there is adequate security to

[6] Definitions and terms specific to particular comment categories, such as "Law Enforcement" and "Long-Term Care Facilities (LTCFs)," are located in those specific sections.

prevent diversion when controlled substances are being transported. As explained in § 1301.74(e), when shipping controlled substances, non-practitioner registrants are responsible for selecting common or contract carriers that provide adequate security to guard against in-transit losses. In addition, non-practitioner registrants are responsible for employing precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against in-transit losses. Although these specific requirements apply to non-practitioners, all registrants (practitioners and non-practitioners) shall provide effective controls and procedures to guard against theft and diversion of controlled substances. 21 CFR part 1301.

[6] **Issue:** One commenter suggested that the DEA modify the definition of "non-retrievable" to read: "means to ~~permanently~~ alter any controlled substance's physical and/or chemical state through *essentially* irreversible means in order to render that controlled substance unavailable and unusable for all practical purposes. This definition is not intended to require destruction beyond the state at which a controlled substance becomes unavailable, unusable, and, subsequently, no longer available for diversion."

Response: The DEA declines to modify the definition as suggested. Such a change would significantly weaken the non-retrievable standard to a state where controlled substances could easily be diverted. The permanent and irreversible alteration of controlled substances is the cornerstone of the non-retrievable standard.

[7] **Issue:** Some commenters asked the DEA to clarify the meaning of the terms "regularly" and "practitioner" used in the proposed § 1317.05(a)(4).

Response: "Practitioner" is defined in the CSA at 21 U.S.C. 802(21) as "a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research." The term "regularly" has its ordinary meaning, with no specific or technical implications. The DEA understands the ordinary meaning of "regularly" to generally be considered as being on a routine basis or at routine intervals.

[8] **Issue:** One commenter suggested that the DEA distinguish reverse distributors who only collect controlled substances for the purpose of disposal from reverse distributors who also handle non-controlled substances and other waste products. This commenter suggested that the DEA lessen the requirements for those reverse distributors that only collect controlled substances for disposal.

Response: The DEA does not distinguish between different "types" of reverse distributors. All reverse distributors receive controlled substances for the purpose of disposal—either through return to the manufacturer who accepts returns, or through destruction. 21 CFR part 1300. The regulations impose the minimum requirements for reverse distributors when handling controlled substances regardless of whether they also handle other substances. Therefore, there is no basis to relax the requirements for reverse distributors whose activities are limited solely to the collection of pharmaceutical controlled substances for the purpose of disposal.

[9] **Issue:** One commenter asked the DEA to clarify the difference between "transfer" and "transport" as used in proposed § 1317.95.

Response: These terms have their ordinary meaning. Generally, the DEA uses the term "transport" to refer to the physical movement of an item from one location to another while "transfer" is used to refer to conveying possession or control (actual or constructive) from one entity to another.

[10] **Issue:** One commenter asked the DEA to clarify the phrase "causes the destruction" as it could be interpreted to mean any person involved in the process.

Response: As previously discussed, proposed § 1317.100 is relocated in this final rule to § 1304.21(e). The DEA included the term "causes the destruction" to encompass such circumstances where a registrant does not itself destroy the controlled substance but is still responsible for the destruction; for example, when a registrant or a registrant's employee initiates the destruction process by engaging a third-party destruction facility that will perform the actual destruction pursuant to § 1317.95(c). This final rule clarifies this distinction in §§ 1317.95(c) and 1304.21(e).

[11] **Issue:** One commenter stated that the rule should be clarified in use of the word "may" with regard to individual counting and inventorying of collected substances. The commenter indicated that the word seems open for interpretation.

Response: The commenter is specifically referring to the NPRM statement "[c]ontrolled substances collected by collectors may not be individually counted or inventoried." The DEA understands that this phrase may be misinterpreted to mean that authorized collectors are not required to count or inventory collected substances. To clarify, the DEA is modifying §§ 1317.60 and 1317.70 to clearly indicate that sealed inner liners and returned mail-back packages "shall not be opened, x-rayed, analyzed, or otherwise penetrated." The DEA also modifies § 1317.75(c) to specify that this prohibition includes counting or inventorying collected substances prior to sealing and removing an inner liner that contains collected substances, as well as after the inner liner is sealed. The DEA discusses below the different requirements applying to law enforcement.

[12] **Issue:** One commenter noted that the DEA used inconsistent time requirements throughout the proposed rule, such as "timely," "prompt," and "as soon as practicable, but no later than 14 days." Additionally, several commenters requested clarification regarding the definition of the word "prompt" in the proposed rule, and commenters asked for clarification regarding how the DEA would determine whether an action is "prompt." Commenters asked for guidance as to what time range the DEA would find reasonably acceptable.

Response: The DEA's use of different time standards throughout the proposed rule was intentional as the different circumstances of each requirement warrant different standards. The various timing requirements are intended to be flexible enough to account for individual circumstances while also ensuring sufficient and adequate controls to prevent diversion and opportunities for diversion. The DEA considered imposing specific timelines (*e.g.*, three days, five days); however, the wide variety of business models and activities made it impossible in most circumstances to set a specific deadline that would prevent diversion and diversion opportunities. Additionally, violations of specific timelines would be *per se* violations of the regulations, whereas violations of the flexible "prompt" and "as soon as practicable" standards would be considered under each registrant's individual circumstances. The DEA's determination will be guided by whether the registrant has fulfilled its responsibility to provide effective controls and procedures to guard against theft and diversion. All controlled substances destined for destruction must be rendered non-retrievable in order to be destroyed in a manner

consistent with this rule. As such, a controlled substance will have been promptly destroyed if it is promptly rendered non-retrievable. 21 CFR 1317.95. "Timely" refers to actions that have a specific time period for compliance, *e.g.*, 30 days. Therefore, in each instance in which the rule uses the word "timely" to refer to destruction requirements for reverse distributors, it refers to the specific time period (14 days in the proposed rule, 30 days in the final rule) in which reverse distributors are required to destroy controlled substances. 21 CFR 1317.15.

C. Types of Entities That May Operate a Collection Program (9 Issues)

[1] Issue: Several commenters asked the DEA to retain the provision in the proposed rule to permit retail pharmacies to maintain collection receptacles. These commenters stated that retail pharmacies will provide a convenient option for ultimate users who desire to safely and securely dispose of their unused or unneeded controlled substances. Commenters also asked the DEA to retain the provision to permit retail pharmacies to manage collection receptacles at LTCFs.

Response: The DEA appreciates the support for the provisions in the rule that permit retail pharmacies to manage collection receptacles at not only the primary registered location of the retail pharmacy, but also LTCFs. 21 CFR 1317.40 and 1317.80. The DEA believes that these two provisions will provide ultimate users and others with convenient options to safely and securely dispose of unused controlled substances. The DEA retained these provisions in the final rule.

[2] Issue: Eighteen commenters asked the DEA to permit hospitals to become authorized collectors so that they may maintain collection receptacles. An additional two commenters asked the DEA to allow specialized hospitals and clinics to maintain collection receptacles. These commenters stated that collection receptacles located inside of hospitals would provide ultimate users with an opportunity to dispose of medication that may no longer be needed or may be expired.

Response: The DEA selected methods for disposal that provide opportunities for ultimate users to securely, conveniently, and responsibly dispose of their unused, unwanted, and expired pharmaceutical controlled substances while also preventing diversion. As previously discussed, after extensive review and careful deliberation, the DEA is permitting certain registered hospitals/clinics to become authorized collectors. 21 CFR 1317.40. In order to counterbalance the diversion risks of allowing collection receptacles to be located inside hospitals/clinics, the DEA is only allowing those hospitals/clinics with on-site pharmacies to become collectors. The DEA is requiring these collectors to place collection receptacles in locations that are regularly monitored by employees, and is prohibiting these collectors from placing collection receptacles in the proximity of any area where emergency or urgent care is provided. 21 CFR 1317.75.

[3] Issue: One commenter suggested that hospitals of a certain size be required to become authorized collectors.

Response: The DEA is not requiring, nor is the DEA authorized to require, any entity to implement a collection program or maintain a collection receptacle. The Disposal Act explicitly states that the "regulations may not require any entity to establish or operate a delivery or disposal program." 21 U.S.C. 822(g)(2).

[4] Issue: It was requested that the DEA allow military treatment facility pharmacies (registered with the DEA as a hospital/clinic), and the Indian Health Service (IHS), including IHS pharmacies (IHS, Tribal, and Urban programs) to become authorized collectors. One commenter also suggested that the DEA permit collection receptacles in select areas of military installations, such as ambulatory care clinics and service member barracks.

Response: As previously discussed, any registered hospital/clinic with an on-site pharmacy and any retail pharmacy may be authorized to be a collector. 21 CFR 1317.40. Ambulatory care clinics and service member barracks are generally not registrants. As discussed in the NPRM, the Disposal Act did not give the DEA authority to create new classes of registration solely for the purpose of conducting ultimate user disposal activities. The DEA is allowing hospitals/clinics with an on-site pharmacy and retail pharmacies to be responsible for and manage collection receptacles in non-registrant LTCFs because the Disposal Act acknowledged that LTCFs "face a distinct set of obstacles to the safe disposal of controlled substances due to the increased volume of controlled substances they handle." 21 CFR 1317.80. LTCF residents generally have limited mobility; accordingly, this final rule authorizes LTCFs to dispose of controlled substances *on behalf of ultimate users who reside or have resided at the LTCF.* 21 CFR 1317.30. Furthermore, un-registered ambulatory care clinics and service member barracks generally lack adequate safeguards to ensure the security of collected pharmaceutical controlled substances; thus, allowing collection receptacles at such locations poses an unacceptable risk of diversion and threatens the public health and safety.

[5] Issue: Eight commenters asked the DEA to permit non-registrants to collect non-controlled substances for the purpose of disposal.

Response: The DEA's authority regarding drug disposal is specific to pharmaceutical controlled substances. Non-registrants may collect non-controlled substances pursuant to all applicable Federal, State, tribal, and local laws and regulations; however, all regulations and laws relevant to controlled substances will apply if controlled substances are collected, even inadvertently.

[6] Issue: One commenter asked the DEA to permit LTCFs to become authorized collectors.

Response: The DEA is without authority to permit LTCFs to become authorized collectors. As discussed in the NPRM, authorized collectors must first be registrants in order for the DEA to impose and enforce these regulations upon them. A majority of LTCFs do not have State authority with respect to controlled substances—a fundamental prerequisite to obtaining a DEA registration. The Disposal Act authorized the development of regulations to permit LTCFs to dispose of controlled substances on behalf of ultimate users who reside or have resided in their facilities. The DEA is permitting hospitals/clinics with an on-site pharmacy and retail pharmacies to become authorized collectors with authority to install and maintain collection receptacles at LTCFs, and declines to extend this authority to the LTCFs themselves. 21 CFR 1317.40.

[7] Issue: Several commenters urged the DEA to create a new status that permits non-registrant organizations to become authorized collectors for the sole purpose of collecting controlled substances from ultimate users and others authorized to dispose of controlled substances on behalf of ultimate users. One commenter asked that the DEA allow non-profit, non-registrant organizations to register as authorized collectors with a reduced fee.

Response: The DEA is not developing a new category of registrant specifically for collecting pharmaceutical controlled substances from ultimate users. Any entity that wishes to collect controlled substances from ultimate users must do so in accordance with this rule, which includes provisions for specified

existing registrant categories to modify their registration to become authorized as collectors. Any person not already registered with the DEA, wishing to become authorized as a collector must first satisfy all of the requirements for registration identified in the CSA and its implementing regulations. Non-registrant organizations may partner with law enforcement and with registrants that are collectors. 21 CFR 1317.65.

[8] Issue: One commenter asked the DEA to clarify how a local government may register with the DEA to become an authorized collector.

Response: As discussed above, the DEA is not creating a new registration category for the exclusive purpose of collecting controlled substances from ultimate users. Persons registered with the DEA as manufacturers, distributors, reverse distributors, NTPs, hospitals/clinics with an on-site pharmacy, or retail pharmacies may apply to modify their registration to become an authorized collector in the manner proscribed by this final rule. 21 CFR part 1301. Any person not already registered with the DEA, wishing to become authorized as a collector must first satisfy all of the requirements for registration identified in the CSA and its implementing regulations. These requirements include being authorized to handle controlled substances by the State in which the applicant is located unless exempt by statute or regulation. The DEA encourages entities that are not registrants to partner with authorized collectors or law enforcement. 21 CFR 1317.65. For example, local governments may partner with authorized mail-back collectors to provide mail-back packages to the public.

[9] Issue: One commenter asked the DEA to clarify that no Federal or State government entity may require registrants to amend their DEA registration to become authorized collectors.

Response: The Disposal Act specifically prohibits the DEA from requiring any entity to establish or operate a delivery or disposal program. 21 U.S.C. 822(g)(2). The prohibition does not extend to every Federal and State agency and the DEA does not have the authority to institute such a prohibition.

D. Locations Where Authorized Collectors May Maintain Collection Receptacles or Host Take-Back Events (1 Issue)

[1] Issue: Six commenters asked the DEA to permit retail pharmacies to manage collection receptacles at establishments other than the retail pharmacy's registered location, such as community centers. Commenters stated other locations may be more convenient for ultimate users and would thus maximize participation. Two commenters asked the DEA to allow collection receptacles at unregistered locations such as permanent household hazardous waste collection sites.

Response: The DEA acknowledges that in some locations, and under certain circumstances, alternative settings may be more convenient for ultimate users, but that is not the only consideration. The DEA believes that in order to adequately ensure the safety and welfare of the public, collection receptacles must be located inside the DEA-registered location of authorized collectors. 21 CFR part 1317.75. Authorized collectors, as registrants, are readily familiar with the security procedures and other requirements to handle controlled substances. Most publicly-accessible locations where controlled substances are not typically handled, such as community centers and hazardous waste collection sites, are not targets for theft in the same manner as those locations where pharmaceutical controlled substances are regularly handled. Thus, those locations are unlikely to be familiar with, or to have in place, the security controls necessary to ensure the security of collected substances and prevent diversion of controlled substances. However, law enforcement may continue to conduct take-back events, and other persons may partner with law enforcement to conduct such take-back events at various locations. 21 CFR 1317.65.

E. Registration Requirements for Authorized Collectors (5 Issues)

[1] Issue: Several commenters asked the DEA to clarify whether or not registration modifications for authorized collectors may be conducted online.

Response: Registration modifications may be conducted online. For the final rule, the DEA is modifying the text of § 1301.51 to clarify that online modifications are indeed permitted. Registrants may go to *www.DEAdiversion.usdoj.gov* to modify their registration when they start or stop collection activities.

[2] Issue: Three commenters stated that it is overly burdensome to require authorized collectors to modify their registration each time they start or stop collection activities. These commenters asked that the DEA provide additional details regarding the registration modification process.

Response: The DEA carefully reviewed the registration requirements and did not find indications to suggest that registration modifications will be overly burdensome. The rule requires that a registrant must apply to modify their DEA registration prior to initiating any collection activities. 21 CFR part 1301. Authorization as a collector is subject to renewal in the same manner as registration. The DEA will consider an authorized collector to be conducting collection activities until the registration is modified, revoked, surrendered, suspended, or otherwise terminated. If an authorized collector stops collection activities, he/she must modify his/her registration to indicate such. The requirement to modify a registration requires a simple written notification to the DEA. This written notification can be easily and quickly conducted online in a few minutes. 21 CFR part 1301. The registrant may go online and select the option to indicate that the registrant has ceased collecting. Registrants without ready access to the online notification method can easily and quickly communicate such information to the DEA in writing via the mail, which the DEA will process promptly upon receipt.

[3] Issue: One commenter suggested that the DEA relax requirements for registration modifications regarding LTCF collection receptacles. This commenter was concerned that registration modifications may outpace the DEA's resources.

Response: The DEA evaluated this request and determined that the registration requirements regarding LTCF collection receptacle management are necessary to ensure accountability and prevent diversion; the related procedures are the minimum necessary to ensure that authorized collectors maintain the receptacles in a manner that is consistent with the applicable regulations. 21 CFR part 1301.

[4] Issue: One commenter asked the DEA to clarify whether or not an entity may apply for registration as a reverse distributor with the sole intent of providing destruction services for collected substances.

Response: Any entity may apply for registration as a reverse distributor pursuant to and in accordance with 21 U.S.C. 822–823, and 21 CFR part 1301. Reverse distributors are not required to conduct all activities that they are authorized to perform.

[5] Issue: Two commenters asked the DEA to clarify whether a destruction facility must be registered with the DEA.

Response: Pursuant to this rule, a destruction facility is not required to register with the DEA simply because a

registrant utilizes that facility to destroy controlled substances in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations. At this time, the DEA does not believe it is appropriate to require these entities to be registered because the destroying registrant maintains possession and control of the substances (and therefore retains responsibility and accountability) until the substances are rendered non-retrievable. 21 CFR part 1301. All handling, monitoring, reporting, recordkeeping, and witnessing with regard to the destruction of pharmaceutical controlled substances must be performed by registrants or their employees. The DEA has omitted the language that was proposed for § 1317.15(c)(4) in order to prevent confusion.

F. Law Enforcement (7 Issues)

[1] Issue: Several commenters asked the DEA to expand the definition of "law enforcement officer" to include law enforcement components of Federal agencies and civilian law enforcement officers.

Response: The final rule definition is expanded from the proposed rule to specifically include officers of the law enforcement components of Federal agencies, and police officers of the Veterans Health Administration and the Department of Defense. The NPRM proposed a definition of "law enforcement officer" to include persons who are employees of a "law enforcement *agency*." The DEA is modifying this definition in the final rule to specifically include employees of law enforcement *component*s of Federal agencies. Any person who meets the criteria for "employee" and "law enforcement officer" outlined in the final rule will be a qualified officer for the purposes of disposal of pharmaceutical controlled substances, regardless of whether the person is considered a "civilian" law enforcement officer. 21 CFR part 1300.

[2] Issue: Four commenters stated it would be overly burdensome to require law enforcement to have a collection receptacle that fits the specifications in the NPRM. These commenters stated that the collection receptacle would pose logistical issues, and that the volume of drugs collected would likely exceed the volume that the receptacle could contain. Commenters also noted that it is unnecessary to mandate that law enforcement utilize collection receptacles at take-back events.

Response: Law enforcement are not required to have a collection receptacle that meets all of the specifications in the rule, and the text of the rule is amended to clarify that the specifications apply to authorized collectors and *not* law enforcement. The only suggested requirements for the physical construction of collection receptacles maintained by law enforcement are that they be securely placed and maintained at the law enforcement's physical location. 21 CFR 1317.35. Also, law enforcement are not required to utilize collection receptacles at take-back events. The text of the final rule states, "[e]ach take-back event should have at least one receptacle for the collection of permitted substances . . ." 21 CFR 1317.65. Thus, law enforcement should have some sort receptacle at take-back events.

[3] Issue: Commenters expressed concern that law enforcement may not have the facilities to store the collected substances until they are shipped to a destruction facility.

Response: The rule suggests that law enforcement store collected substances in a manner that is consistent with its standard procedures for storing illicit controlled substances. The language used in the text of the rule, "should," is suggestive. Law enforcement are encouraged to follow the guidance in 21 CFR 1317.35; however, they are not required to do so. It should be noted that the requirements in 21 CFR 1317.65 pertaining to law enforcement presence at take-back events are mandated; however, the DEA only suggests procedures for the storage and transportation of pharmaceutical controlled substances collected at take-back events.

[4] Issue: One commenter asked the DEA to permit entities other than law enforcement to conduct take-back events.

Response: If an authorized collector or other entity wishes to conduct a take-back event, the event must be held in partnership with law enforcement, as provided in the rule. 21 CFR 1317.65. Take-back events are intended to be limited-duration events that may take place at an unregistered location that is easily accessible to the public, such as a community center or town center. Given the likelihood of publicity and low physical security at such locations, the DEA believes that it is imperative to ensure active law enforcement participation for the safety of the event participants and the community, as well as to help deter theft and diversion of pharmaceutical controlled substances.

[5] Issue: Commenters urged the DEA to relax the "authorized employee" requirement for civilian law enforcement officers. These commenters stated that the DEA should treat civilian law enforcement officers as "authorized employees" for the purposes of this rule. They stated that these officers and employees currently assist with take-back events, and if they were no longer permitted to, there would be a staffing shortage to assist with take-back events. Additionally, several commenters encouraged the DEA to allow civilian law enforcement employees to handle collected substances if they meet the same requirements as an employee or handle the substances in a manner consistent with law enforcement protocols.

Response: In the NPRM, "authorized employee" referred to those registrant personnel who would be permitted to directly participate in the disposal process. "Authorized employee" did not pertain to law enforcement officers or to take-back events. In the final rule the definition is modified, but it still only pertains to those persons who may be permitted to directly participate in the disposal process. 21 CFR part 1300. With respect to law enforcement and take-back events, as discussed above, any person who meets the criteria for "employee" and "law enforcement officer" outlined in the final rule will be a qualified officer for the purposes of disposal of pharmaceutical controlled substances, regardless of whether the person is considered a "civilian" law enforcement officer. The DEA declines to expand the law enforcement authority to specifically include civilian law enforcement employees. Only employed law enforcement officers, as defined by this final rule, may handle pharmaceutical controlled substances at take-back events. As discussed in the NPRM and previous responses to this issue, the DEA believes that this level of security is necessary to prevent theft and diversion and to ensure the safety of the public due to the highly publicized nature of take-back events and the fact that such events are likely to occur at locations with minimal security. The DEA does not believe that this requirement will hinder the success of take-back events. As previously discussed, only one law enforcement officer must oversee the take-back event, and at the discretion of the law enforcement agency or law enforcement component of a Federal agency, this officer may also be the law enforcement officer who maintains control and custody of the collected substances. 21 CFR 1317.65. There are no prohibitions against other persons assisting law enforcement officers conduct the take-back event.

[6] Issue: One commenter asked the DEA to address what rights Military

Provost Marshal Officers have with respect to collecting controlled substances from ultimate users.

Response: Under § 1317.35 of the new regulation, Federal law enforcement may continue to conduct take-back events and mail-back programs, and operate collection receptacles as further detailed in the regulation. If the Office of the Provost Marshal is considered "Federal law enforcement," it would be eligible to conduct such collection activities. Federal law enforcement can, and in some cases must, appoint a law enforcement officer to oversee those activities. The appointed officer would then have the authority granted by his/her agency.

[7] Issue: One commenter asked the DEA to clarify how law enforcement may transport and deliver collected substances to a destruction facility (i.e., whether they may ship such substances using a common carrier) and how law enforcement can comply with Department of Transportation (DOT) requirements when transporting substances that may contain hazardous materials.

Response: The DEA has no expertise or authority to interpret or apply the DOT laws, regulations, or guidelines regarding transportation of pharmaceutical controlled substances that may constitute hazardous materials. As such, interested persons are encouraged to contact the DOT directly with their specific circumstances, and such persons can obtain more information at *www.phmsa.dot.gov/hazmat.* However, the DEA understands that the DOT's Hazardous Materials Regulations apply to entities that place hazardous materials in commercial transportation, and not government vehicles operated by government personnel solely for non-commercial purposes. If more detailed guidance is necessary, the DEA encourages law enforcement and other entities to consult the DOT for guidance on transporting collected substances that may contain hazardous materials. For additional commentary on hazardous material disposal please see comment section "Q." entitled "Hazardous Materials Transportation and Hazardous Waste Destruction."

G. Collection Receptacle Design, Inner Liners, Placement, and Security (24 Issues)

Clarification of Terms

[1] Issue: One commenter noted that the DEA interchangeably used the terms "container" and "shell" when referring to the outer collection receptacle.

Response: The DEA is modifying the final rule to consistently use the term "container" when referring to the outer portion of collection receptacles. This change is purely for stylistic consistency and makes no substantive change to the rule.

Collection Receptacle Design

[2] Issue: The DEA specifically requested comments regarding the value of the use of a uniform symbol to be placed on collection receptacles. The DEA received 22 comments regarding the use of a uniform symbol. Five commenters supported the use of a uniform symbol, and 17 commenters opposed the use of a uniform symbol. One commenter suggested that the symbol be yellow. Four commenters noted that the use of such a symbol is unnecessary given the requirement to clearly mark and label the receptacles. Three commenters expressed concern that the use of such symbols would result in the receptacles becoming targets for diversion. One commenter was not opposed to the use of a uniform symbol but does not believe it is essential. One commenter indicated that the use of a uniform symbol should be contingent upon the location and security of the collection receptacle.

Response: The DEA appreciates all of the comments submitted in response to this request. After careful consideration, the DEA declines to include a uniform symbol requirement in this final rule. However, the DEA may consider requiring a uniform symbol on collection receptacles after a sufficient time to observe the effects of the existing requirement to clearly mark and label collection receptacles.

[3] Issue: Eleven commenters stated that any signage indicating what ultimate users may deposit into the collection receptacle should be in plain language. These commenters noted that most ultimate users cannot distinguish between controlled substances and non-controlled substances. Other commenters stated that no sign should be required at all, and others suggested the use of pictograms instead of words. Others raised concerns that signage will draw attention to the receptacles, thus increasing risk for theft and diversion.

Response: The final rule does not require any specific language, design, or color choice for the display on the collection receptacle as long as the sign indicates that only schedules II–V controlled substances and non-controlled substances *are* acceptable. 21 CFR 1317.75. As explained above, comingling is permitted but not required. 21 CFR 1317.75. Plain language, pictograms, or a combination of the two, may be used, as long as it is clear that schedule I controlled substances, controlled substances not lawfully possessed by the ultimate user, and illicit or dangerous substances are not permitted to be placed in the container. The DEA believes that some notice regarding what substances may be disposed in collection receptacles is necessary in order to provide guidance to the public and to discourage the use of receptacles for disposing trash or other items. While the diversion risks presented by the requirement for signage is mitigated by physical security requirements (*e.g.,* that the receptacle be securely fastened to a permanent structure), authorized collectors should be mindful that the selected signage not transform the receptacle into a target for theft or diversion.

[4] Issue: Four commenters suggested that the collection receptacle sign encourage ultimate users to remove medication from its container before placing the medication in the collection receptacle. Several of the commenters who had participated in authorized pharmaceutical controlled substance take-back programs noted that the packaging for medication is voluminous, and that including such packaging will be burdensome since it will necessitate changing inner liners more frequently.

Response: The DEA appreciates these commenters' concerns. Although collectors may encourage ultimate users to remove substances from their containers before depositing them into a collection receptacle or mail-back package, the DEA declines to require it. The DEA has declined to mandate whether substances must be disposed of, with or without packaging, because such requirements would not necessarily affect security or increase the risks of diversion, and as such, should be left to the individual collectors and other relevant authorities who best know the needs and requirements of their programs and locations.

[5] Issue: Other commenters indicated that some hazardous waste disposal regulations require the disposal of medication containers, which may not fit into the receptacles.

Response: As discussed in the immediately preceding comment, the DEA is neither requiring nor prohibiting medication containers to be disposed of with pharmaceutical controlled substances. Moreover, there is no indication that the vast majority of medications will not fit into the "small opening" that the collection receptacles specifications require. For additional commentary on hazardous waste

disposal please see comment section "Q.", entitled "Hazardous Materials Transportation and Hazardous Waste Destruction."

[6] Issue: The DEA received comments that the inner liner should be a large plastic tub or bucket within a receptacle that can be easily removed and the collected items either dumped into smaller containers or sorted before being secured into storage for disposal or prior to destruction.

Response: The DEA carefully considered the specifications of both the inner liner and the outer container of the collection receptacle. To prevent diversion and protect the public health and safety, the DEA drafted this rule with the precisely considered objective of limiting the number of people who handle the collected substances. The DEA's extensive experiences in regulating and enforcing the closed system of distribution established by the CSA have demonstrated that a key factor in reducing diversion risk is limiting the handling of controlled substances. In the context of disposal, this means prohibiting the sorting of collected substances once they are deposited into a collection receptacle.

[7] Issue: One commenter stated that the collection receptacle design specifications will require current collection programs for non-controlled substances to install new collection receptacles if those programs wish to additionally collect pharmaceutical controlled substances. This commenter stated that such installations will be burdensome and will discourage participation for these programs.

Response: The DEA deeply appreciates the concern and activism of local communities and other groups currently conducting non-controlled substance drug take-back programs and their wish to expand collection activities to pharmaceutical controlled substances. Programs such as these are an important and vital component of the communities they serve. The DEA understands that publication of this final rule may necessitate the need for some programs to implement new procedures and install new equipment in order to additionally collect pharmaceutical controlled substances. The DEA has not established the new requirements lightly or without considerable deliberation as to its impacts on existing programs. However, the risk of diversion for non-controlled substances is relatively low compared to the much higher risk of diversion, and the corresponding and associated risks to public health and safety, for pharmaceutical controlled substances. The DEA has been charged by Congress with the enforcement of the controlled substance laws of the United States, and must ensure that pharmaceutical controlled substances are properly secured and not easily susceptible to theft or diversion. Accordingly, the collection receptacle design specifications outlined in § 1317.75 will be implemented as proposed.

[8] Issue: A commenter asked the DEA to permit the use of similar receptacles that may already exist and were designed for the deposit and storage of medical waste.

Response: The DEA is not prohibiting the use of collection receptacles that currently exist on the market as long as such receptacles meet all of the design specifications outlined in § 1317.75 of this rule.

[9] Issue: Five commenters stated that the requirement for a collection receptacle to be fastened to a permanent structure is burdensome. Several commenters pointed out that many pharmacies do not own the property that is their DEA-registered location, and such fixtures and installments are prohibited. One commenter pointed out that this requirement would be particularly burdensome for small, rural pharmacies. Another commenter asked if the requirement applies if the collection receptacle is located in a locked room, inaccessible to the public.

Response: The DEA appreciates the willingness of pharmacies to aid in the societal goal of helping to combat unauthorized access to and abuse of pharmaceutical controlled substances. The DEA understands that there may be logistical concerns for some retail pharmacies that wish to maintain a collection receptacle at their registered location. However, the DEA believes that permanently-secured, fixed containers are the minimum required to prevent diversion and theft of collected substances. The requirement that collection receptacles be securely fastened to a permanent structure applies to all authorized collectors' collection receptacles, no matter the location of the registrant. 21 CFR 1317.75. Although the final rule does not expressly prohibit collection receptacles from being placed in a locked room that is inaccessible to the public, the final rule does mandate that collection receptacles at authorized collectors' registered locations must be accessible to ultimate users, and others authorized to dispose of controlled substances on behalf of ultimate users, as they are the only people who may deposit pharmaceutical controlled substances into a collection receptacle (e.g., ultimate users cannot transfer pharmaceutical controlled substances to pharmacy staff). 21 CFR 1317.30. The DEA encourages retail pharmacies leasing their commercial space to work with their landlords to allow for the installation of collection receptacles under the conditions established by this rule.

[10] Issue: Nine commenters stated that requiring an outer container with an inner liner is unnecessary and burdensome. These commenters proposed that the collection receptacle be designed in such a way that it can be returned to the reverse distributor as a complete unit.

Response: The DEA appreciates the value in utilizing temporarily secured containers that can be sealed and shipped for destruction; however, the DEA believes that such systems present an unreasonable risk of diversion because, even when secured, such containers can be relatively easily removed when compared to a securely fastened and locked outer container. Relatedly, the DEA is requiring that collection receptacles be "substantially constructed," which is intended to ensure that the construction is such that unauthorized access to the contents of the receptacle is not easily obtained. 21 CFR 1317.75. Accordingly, the DEA is requiring that collection receptacles have a substantially-constructed outer container and removable inner liners. 21 CFR 1317.60 and 1317.75.

[11] Issue: Three commenters stated that the collection receptacle should not be required to have a traditional lock, but that its opening be designed so that that the contents cannot be removed.

Response: In implementing the Disposal Act to provide secure and responsible disposal methods for pharmaceutical controlled substances by ultimate users, the DEA must ensure that collected substances are properly secured and not easily susceptible to theft or diversion. The requirements pertaining to collection receptacles were carefully considered and designed to limit the handling of the controlled substances, from ultimate user to destruction. These considerations dictated the size of the opening. However, the NPRM and the final rule allow for flexibility regarding a traditional lock, and require that "the small opening in the outer container of the collection receptacle shall be locked *or made otherwise inaccessible to the public* when an employee is not present (e.g., when the pharmacy is closed)." 21 CFR 1317.75(f).

[12] Issue: One commenter suggested that the DEA conduct a national pilot program prior to implementation of the final rule to ensure that collection

receptacle requirements are feasible and effective.

Response: The DEA believes that the need to implement this rule in order to allow secure convenient options for disposal outweighs the delay and limited benefit that may be obtained by implementing any pilot programs or other testing or research. Through various outreach efforts, including the public meeting the DEA held in January 2011, comments from industry, and information obtained from pilot programs, the DEA believes that it has effectively researched and analyzed the various aspects of this rule. Also, the DEA believes that implementation of this rule is important to helping reduce the amount of unwanted pharmaceutical controlled substances available for theft, diversion, and accidental ingestion.

[13] Issue: One commenter asked the DEA to allow a Special Agent in Charge (SAC) to approve container and inner liner designs.

Response: As discussed in the NPRM, the DEA determined that the elimination of individual SAC approval for various aspects of disposal or destruction is necessary in order to ensure clear and consistent requirements throughout the United States, thus reducing the potential for confusion regarding requirements for ultimate users and authorized collectors. Specific approval of individual collection receptacles and inner liner designs is not required. All collection receptacles and inner liner designs must meet the specifications outlined in this final rule. 21 CFR 1317.60 and 1317.75.

[14] Issue: One commenter suggested that national pharmacy organizations educate the public on proper disposal methods and various disposal options. This commenter suggested that such organizations post information online and disseminate leaflets at retail establishments.

Response: With regard to patient information regarding disposal, the DEA is not requiring any entity to educate the public on proper disposal methods and their various disposal options. However, the DEA anticipates that many entities will voluntarily choose to do so. The DEA applauds and encourages voluntary, educational outreach to the public on issues related to the abuse potential and proper disposal of pharmaceutical controlled substances, whether it be through law enforcement, community groups, or professional organizations.

Collection Receptacle Inner Liners

[15] Issue: Several commenters asked for clarification regarding inner liner tracking requirements. Specifically, commenters asked how unique identification numbers should be assigned, how tracking systems are to be implemented, and what entity will be responsible for placing identification numbers on inner liners. One commenter suggested that the DEA regulate the manufacture of inner liners or require that inner liners be sequentially numbered.

Response: The rule outlines the design requirements and the recordkeeping requirements for inner liners. The purpose of a unique identification number is to provide for complete and accurate records that can be inventoried to ensure that each liner is accounted for from receipt, to installation, removal, storage, transfer, and destruction. 21 CFR part 1304. The unique identification numbers therefore must be unique to the individual collector. 21 CFR 1317.60. The DEA does not intend to require any particular method for assigning such numbers and is modifying the text of proposed § 1317.60(e) by indicating that only inner liners must bear a permanent, unique identification number. The company manufacturing the inner liners may assign the numbers. The DEA does not have authority to directly regulate the manufacturers of the inner liners.

[16] Issue: One commenter suggested that the inner liner be clear so that it can be visually inspected for non-compliant items.

Response: Due to associated increased risks for diversion, the DEA determined that the contents of the inner liners must not be viewable once the inner liner is sealed. 21 CFR 1317.60. The DEA appreciates the concerns regarding certain non-compliant items being placed in collection receptacles; however, for reasons discussed in previous comments, no one is permitted to handle the contents of inner liners. 21 CFR 1317.75. The DEA would like to point out that the text of the rule does not prohibit items from being observed *prior* to being placed in the collection receptacle, which could be an effective way to ensure that such non-compliant items are not placed in the collection receptacle.

[17] Issue: Several commenters indicated that the requirement to store sealed inner liners in the same manner as schedule II controlled substances will be overly burdensome and will reduce the amount of space available for storing schedule II inventory at retail pharmacies. These commenters suggested that the DEA allow the authorized collector to transfer collected substances in inner liners to a secure warehouse facility for storage until they can be picked up or shipped.

Response: The DEA appreciates these concerns but declines to permit authorized collectors to transfer collected substances to warehouse facilities for storage. Filled inner liners must be stored only at primary registered locations (and at LTCFs in accordance with § 1317.80(c)) and may not be transported to off-site warehouses. The basis for this requirement is that the risk of diversion increases each time inner liners change hands or are transported. However, as previously discussed, this final rule expands the NPRM requirement and authorizes practitioners to store collected substances at their registered location in either a securely locked, substantially constructed cabinet or a securely locked room with controlled access. 21 CFR 1317.05.

[18] Issue: Four commenters stated that the DEA should permit schedule I controlled substances to be disposed of via collection receptacles, mail-back packages, or take-back events.

Response: The Disposal Act addresses the issue of unused prescription drugs, and it allows the DEA to provide ultimate users with a secure and responsible method to dispose of pharmaceutical controlled substances. This rule does not address the disposal of illicit controlled substances, *e.g.,* those substances controlled in schedule I of the CSA. Schedule I controlled substances, by definition, have no accepted medical use in treatment in the United States, and may not be lawfully prescribed or otherwise distributed to any person. In fact, any transfer of a schedule I controlled substance by an ultimate user is a violation of the CSA, unless the ultimate user is participating in an investigational use of drugs pursuant to 21 U.S.C. 355(i) and 360b(j), and the delivery is conducted in accordance with 21 CFR 1317.85.

Collection Receptacle Placement and Safety

[19] Issue: Ten commenters expressed concern regarding security in retail pharmacies with collection receptacles. Several commenters asked the DEA to provide guidance for proper security measures. One commenter asked for clarification on an authorized collector's liability should a receptacle become subject to diversion or if improper substances are deposited.

Response: The DEA appreciates the concerns of the commenters and has carefully considered the risks and benefits associated with collection receptacles located in authorized retail pharmacies. The DEA's rationale for

allowing collection at authorized retail pharmacies was described in the NPRM. As previously noted, the DEA is not requiring any pharmacy to provide a collection receptacle. Each registrant is free to weigh the risks and benefits in determining whether or not to seek status as an authorized collector. The DEA proposed the rule with the security requirement for permanently-secured, fixed containers based on a determination that this was the minimum required to help reduce the risk of diversion and theft of pharmaceutical controlled substances. 21 CFR 1317.75. At retail pharmacies, the location of collection receptacles within the immediate proximity of a designated area where controlled substances are stored and at which an employee is present is anticipated to provide an additional layer of security due to the increased visibility of the receptacles. 21 CFR 1317.75. While potential violations of the CSA and its implementing regulations are investigated and assessed independently, this final rule imposes the minimum required procedures to prevent and detect diversion. Even so, each authorized collector's circumstances are unique. All registrants should be mindful of their responsibility to provide effective controls and procedures to guard against theft and diversion under 21 CFR 1301.71(a), and their duty to report thefts and significant losses of controlled substances under 21 CFR 1301.74 and 1301.76.

[20] Issue: One commenter suggested that the inner liners be nondescript and free of any markings that would indicate their contents. This commenter was concerned that any markings on the inner liners would increase diversion risks and make them potential targets for drug seekers.

Response: The DEA appreciates the commenter's concern for potential diversion risks that inner liners might pose, and made the determination to require them only after careful consideration of the associated risks and benefits of their use, and alternatives to their use. The DEA is requiring the size of the inner liner to be clearly marked on the outside of the liner, and for the inner liner to bear a unique identification number in order to help ensure accountability, and to identify and prevent diversion. 21 CFR 1317.60. Given the totality of information reviewed, the DEA concluded that a requirement for the contents to be non-viewable once the inner liner is sealed will help reduce diversion risks and deter drug seekers.

[21] Issue: One commenter stated that requiring contents of the inner liner to be non-viewable could lead to diversion as staff could record controlled substances as being disposed of without actually placing them into the receptacle.

Response: The rule prohibits authorized collectors' staff from handling collected substances, even for the purpose of depositing them into the collection receptacle. Ultimate users, and those who are authorized to handle controlled substances on behalf of ultimate users for the purpose of disposal, are the only persons who may deposit pharmaceutical controlled substances into a collection receptacle. 21 CFR 1317.30. Therefore, the DEA does not envision a circumstance where pharmaceutical controlled substances might be recorded as having been disposed of, but were in actuality diverted as a result of pharmacy staff never having placed the substances into the collection receptacle.

[22] Issue: One commenter indicated that the use of an inner liner that is removable and sealable immediately upon removal without emptying or touching the contents is impractical because the contents may spill or fall out and then must be handled.

Response: The DEA carefully considered the design and security requirements for inner liners and determined that the collection receptacle option will help to minimize the risk of diversion while ensuring safety and convenience for ultimate users and collectors. As discussed in the NPRM, inner liners that allow opportunities for collectors to sort or otherwise handle the collected substances would decrease security and increase the risk of diversion. The DEA does not believe that overfill or spillage from the inner liners will be a concern as the requirement that inner liners fit within the outer container of the collection receptacle is designed to prevent such occurrences. However, security requirements, such as the presence of two employees to remove or supervise the removal of an inner liner, help reduce the risk of theft and diversion if such instances do occur. 21 CFR 1304.22, 1317.60, and 1317.75. If spillage occurs, a registrant's responsibility to provide effective controls and procedures to guard against theft and diversion of controlled substances would require the registrant to take corrective action to prevent spillage from recurring.

[23] Issue: Several commenters asked the DEA to identify the maximum allowable capacity for a receptacle and the maximum duration that controlled substances may be stored in the receptacle.

Response: There is no maximum or minimum capacity for collection receptacles at this time. Although there is no maximum duration that the collected substances may remain in the collection receptacle at this time, authorized collectors are reminded of their responsibility to provide effective controls and procedures to guard against theft and diversion, 21 CFR 1301.71(a), and their duty to report thefts and significant losses of controlled substances under 21 CFR 1301.74 and 1301.76.

[24] Issue: Several commenters asked the DEA to allow "disposal companies," distributors, and reverse distributors to manage and maintain collection receptacles at the registered locations of authorized collector retail pharmacies and at LTCFs on behalf of the authorized collector retail pharmacies. These commenters also asked if such entities may establish a fee system for such services.

Response: Distributors and reverse distributors will not be permitted to manage or maintain collection receptacles at retail pharmacies or LTCFs. 21 CFR 1317.40 and 1317.80. The DEA determined that no entities other than retail pharmacies and hospitals/clinics with an on-site pharmacy will be permitted to manage collection receptacles at LTCFs. 21 CFR 1317.40 and 1317.80. As discussed in the NPRM, this rule establishes a checked system of transfers where each registrant who handles collected substances serves as a source of verification for the other registrants that handle the same substances, thus ensuring that the collected substances reach their intended destination with accountability and a reduced risk of diversion. In order to maintain this system, all collected substances must be handled in the manner described in this rule, including the requirement that the handling of a collection receptacle inner liner be restricted to employees of the authorized collector as provided, with the limited exception for LTCFs. 21 CFR 1317.80. Such requirements ensure that persons handling collected substances during the disposal process are accountable to their employer, and the number of entities handling the collected substances is reduced while also providing a secure system of checks that increases the level of accountability.

H. Mail-Back Programs (11 Issues)

[1] Issue: Thirteen commenters stated that the on-site destruction requirement for mail-back programs is severely

limiting due to the limited number of commercial incinerators. These commenters urged the DEA to allow collectors to receive mail-back packages whether or not they have a means of on-site destruction. Several commenters also asked the DEA to allow collectors to use a third party to destroy mail-back packages.

Response: As discussed in the NPRM, an on-site method of destruction for mail-back packages is the minimum necessary to prevent diversion of controlled substances destined for destruction. 21 CFR 1317.05. Importantly, an on-site method of destruction reduces the accumulation of controlled substances in a single location, and minimizes the transfer of controlled substances between various locations. This is intended to help minimize the risk of diversion. For each of the three methods of ultimate user disposal included in this rule, the DEA has attempted to minimize the number of entities that handle the collected substances in order to minimize the risk of diversion, which increases each time a controlled substance is transferred to a new person. It is emphasized that authorized collectors may partner with reverse distributors and other authorized registrants with on-site methods of destruction to promote mail-back programs, e.g., empty mail-back packages may be disseminated at hospitals/clinics and retail pharmacies and mailed back to a reverse distributor with an on-site method of destruction.

[2] Issue: One commenter strongly supports the requirement that authorized collectors who conduct a mail-back program use an on-site method of destruction; however, other commenters expressed concern that the requirement would discourage authorized collectors from conducting mail-back programs. Several commenters noted that very few destruction facilities currently exist and there was concern that such facilities do not have proper security to handle controlled substances.

Response: As indicated in the previous response, mail-back programs have the potential to provide a secure and responsible means of disposal without geographical restriction within the United States. As such, the existence of a small number of appropriate destruction sites should not impact ultimate users' ability to participate or the potential for mail-back programs to develop. In other words, a single destruction site can support many different mail-back programs and an unlimited number of mail-back packages may be provided to ultimate users at various locations throughout the United States to be mailed back to a single destruction site. Also, as discussed in the NPRM, the DEA hopes that the rule will encourage innovation and expansion of destruction methods beyond incineration so that additional entities may provide destruction services for mail-back programs in the future.

[3] Issue: A few commenters expressed concern that no entities will undertake the implementation of a mail-back program because of the related expense, noting that the requirement that mail-back packages be pre-addressed with pre-paid postage will be very costly. A commenter also asked the DEA to clarify whether unregistered retail pharmacies working with a registered authorized collector would be permitted to make mail-back packages available to patients.

Response: As discussed in the NPRM, authorized collectors who conduct mail-back programs are encouraged to collaborate to operate mail-back programs by partnering with other entities to assist with the dissemination of mail-back packages to ultimate users, in order to minimize costs. Additionally, pre-paid postage will ensure that the package is not returned to sender, which will help reduce its handling and therefore, the diversion risks. Pre-addressed envelopes will help ensure that the package is delivered to the authorized location.

[4] Issue: One commenter asked the DEA to clarify whether there are specific testing requirements in regard to the packaging standards (e.g., water/spill proof, tear resistant, sealable, etc.). One commenter asked the DEA to clarify the distinction between packages damaged as part of normal transport and packages damaged by other means, such as tampering.

Response: The DEA is not requiring specific testing requirements to ensure packages meet the standards provided in § 1317.70 (e.g., water/spill proof, tear resistant, sealable, etc.). However, the packages must be consistent with these standards. Collectors authorized to receive mail-back packages must make a determination based on the facts and circumstances as to whether or not an apparently damaged package became so through normal transportation or through tampering or other intentional means.

[5] Issue: Commenters expressed concern that the requirement for mail-back collectors to issue mail-back packages with unique identification numbers is burdensome and does not seem to provide any useful information since ultimate users are not required to notify collectors that they have mailed a package, and it is likely that many packages will not be used. Five commenters asked the DEA to explicitly state that authorized collectors who conduct mail-back programs will not be responsible for reconciling mail-back packages that were never returned.

Response: The DEA believes that recording the unique identification numbers of mail-back packages in accordance with § 1317.70 is a reasonable recordkeeping requirement designed to help identify and prevent diversion; this information can aid investigations and is useful for that purpose alone. The DEA recognizes that disseminated packages may go unused, and this alone should not form the basis for unreasonable scrutiny of authorized collectors. Additionally, at this time, authorized collectors are not responsible for tracking mail-back packages that were disseminated but never returned.

[6] Issue: One commenter disagreed with the DEA's assessment that mail-back programs are more susceptible to diversion and therefore require stricter controls.

Response: The DEA carefully considered the diversion risks in mail-back programs. Based on the DEA's experience, the DEA believes that the risks of diversion associated with mail-back programs are great because of necessary actions including the handling of the packages, mail sorting, and mail delivery by non-registrants. The DEA believes that the security measures established by this rule are the minimum required to reduce the risk of diversion inherent to mail-back programs.

[7] Issue: One commenter expressed concern that mail-back packages would be subject to greater risks of diversion in rural areas.

Response: The DEA appreciates the commenter's concern. The DEA has considered the diversion risks for mail-back programs, including packages originating in rural areas. It may be true that mail-back packages originating in some rural areas may be subject to an increased risk of diversion due to fewer people being able to readily witness theft from a mailbox. However, it may also be true that risks of diversion from mail-back programs might be lower in rural areas due to less traffic (pedestrian, vehicular, or equine), resulting in fewer opportunities for tampering with or theft of mail-back packages. Regardless, the DEA believes that the relative risks of diversion of mail-back packages in rural areas are mitigated by the required security procedures and are outweighed by the benefits of providing ultimate users a means to dispose of unused, unwanted,

or expired pharmaceutical controlled substances.

[8] Issue: The United States Postal Service (USPS) has raised a number of issues relating specifically to the mail-back program, and also to the disposal regulations in general. The USPS asked the DEA to make several changes to the terminology used in the proposed rule, so that the DEA regulations will be consistent with standard USPS products and services. The USPS also requested that the DEA clarify that all registrants must comply with USPS laws and regulations, including applicable USPS requirements for packaging and mailing pharmaceuticals.

The USPS asked the DEA to consistently refer to "mail-back packages" as "mailing packages" rather than "mailers" as the USPS refers to "mailers" as persons or entities entering a mailing. The USPS also asked the DEA to remove any references to "business reply mail" that are inconsistent with the USPS's use of the term. The USPS asked that proposed § 1317.85 specify that ultimate users may return recalled controlled substances to the manufacturer or other authorized registrant by U.S. Mail. The USPS also asked the DEA to clarify that inner liners are requirements for collection receptacles—not mail-back packages.

The USPS also requested that the DEA state that collectors operating a mail-back program must exclusively use the United States Postal Service. The USPS also asked the DEA to make all references to "mail system" in the preamble refer exclusively to the United States Postal Service. The USPS asked that they not be prohibited from transporting controlled substances to a reverse distributor on behalf of law enforcement, especially in light of the fact that law enforcement may operate mail-back programs.

Response: The DEA appreciates the time taken by the USPS to review the proposed rule and submit thoughtful comments with their concerns and suggestions. In addition, the DEA acknowledges that the USPS understands these regulations and has experience responsibly handling controlled substances. The DEA is modifying some of the terminology that was used in the NPRM, per the USPS's concerns and suggestions. Rather than use the term "mailing packages," all references to "mailers" are changed to "mail-back packages." The DEA believes this will better avoid the confusion regarding "mailers" being defined as persons or entities that enter a "mailing." The reference to "business reply mail" is also removed. The DEA declines to specify that "mail" or "mail system" refers exclusively to the USPS; however, the USPS is a shipping option.

Additionally, in § 1317.85, ultimate users still have the options to return a recalled controlled substance as is currently allowed under § 1307.12 of the existing regulations. The text of the rule clearly states that all persons and entities must comply with applicable Federal laws and regulations, which includes USPS laws and regulations. Also, inner liners are requirements for collection receptacles—not mail-back packages. The mail-back package specifications are outlined in § 1317.70.

While the USPS asked that the text of the regulation specifically state that mail-back packages may be sent via the U.S. Postal Service as well as by common or contract carrier, the DEA declines to make this change. The DEA considers the USPS to be a common or contract carrier for purposes of the CSA.

[9] Issue: One commenter asked the DEA to clarify whether the regulation that requires mail-back programs to include only mail-back packages mailed from within the United States will preclude USPS-serviced mail-back programs in any of the areas in which it operates (e.g., the Caribbean District, other territories such as Guam, and United States military installations).

Response: The term "import" means "any bringing in or introduction of" a controlled substance into any area. Pursuant to 21 U.S.C. 952, it is unlawful to import controlled substances into the customs territory of the United States (the 50 States, the District of Columbia, and Puerto Rico), except under specific circumstances not relevant to ultimate user disposal. Thus, an ultimate user located outside of the customs territory of the United States is not permitted to send a mail-back package into the customs territory of the United States.

[10] Issue: One commenter asked the DEA to clarify whether authorized collectors operating mail-back programs may use carrier services that allow packages to be held at a carrier facility until the packages can be picked up.

Response: Although some changes to business operations may need to occur in order for an authorized collector to effectively establish and maintain a mail-back program, the requirements established by this rule are the minimum required to detect and prevent diversion. As described in this rule, mail-back packages must be pre-addressed to the authorized mail-back location with the on-site destruction method, and thus, the packages must be delivered to the authorized mail-back location rather than picked up by the collector. 21 CFR 1317.70. The pre-addressed delivery location must be capable of receiving such deliveries on a regular basis without interruption. Otherwise, the opportunities for diversion increase as the packages are delayed or stored during transit.

[11] Issue: One commenter suggested that the DEA establish a national mail-back program.

Response: This rule authorizes certain collectors to conduct mail-back programs. 21 CFR 1317.40 and 1317.70. There is no limitation regarding the geographic coverage of mail-back programs within the United States if the programs comply with all applicable Federal, State, tribal, and local laws and regulations. At this time, the DEA does not have the resources to operate a national mail-back program.

I. Take-Back Events (6 Issues)

[1] Issue: One commenter indicated it would be difficult for ultimate users to participate in take-back events, particularly in rural areas.

Response: The DEA has attempted to expand the variety of disposal options while also ensuring secure and responsible drug disposal, and the DEA anticipates that the expansion to include certain hospitals/clinics to become authorized as collectors will provide more disposal options for ultimate users, including those in rural areas. Additionally, the DEA encourages those persons living in rural areas who are unable to utilize a collection receptacle or attend a take-back event to dispose of unwanted pharmaceutical controlled substances in the same manner in which the pharmaceutical controlled substances were received, i.e., if the substances were delivered by a mail-order pharmacy, the DEA encourages the pharmacy to include a mail-back package for safe disposal; or, if the substances were dispensed at a pharmacy, the DEA encourages pharmacies to have a collection receptacle available for safe disposal. Nonetheless, the DEA recognizes that some ultimate users may not have convenient access to any of the disposal options available in this rule. Until the availability of these disposal options increases, ultimate users who wish to dispose of unwanted pharmaceutical controlled substances may continue to dispose of them in manners consistent with all applicable Federal, State, tribal, and local laws and regulations. The DEA's Office of Diversion Control Web site provides information regarding safe disposal of pharmaceutical controlled substances, including guidance from the FDA and the EPA. Ultimate users can find this information at *www.DEAdiversion.usdoj.gov.*

[2] Issue: Several people asked the DEA to clarify the role of law enforcement at take-back events. One commenter asked the DEA to relax the two-employee requirement for law enforcement officers handling collected substances. Another commenter stated that law enforcement officer supervision, rather than direct participation, should suffice.

Response: Law enforcement must appoint at least one law enforcement officer employed by the agency to oversee collection at the take-back event. 21 CFR 1317.65. "Oversee" has its common, everyday meaning: To supervise, manage, watch over, and direct in an official capacity. The direct participation this rule mandates is that a law enforcement officer must maintain custody and control of the collected substances from the time they are collected to the point in time that they are securely transferred, stored, or destroyed. 21 CFR 1317.65. This rule does not require two law enforcement officers to be present at take-back events; however, law enforcement may determine that two or more law enforcement officers are necessary at a particular take-back event due to safety and security concerns. In the alternative, law enforcement may determine that the same law enforcement officer may oversee the take back event and also maintain custody and control of the collected substances from the time the substances are collected from the ultimate user or person authorized to dispose of the ultimate user decedent's property until secure transfer, storage, or destruction has occurred, as outlined in § 1317.65(b). Although the participation of law enforcement is required at take-back events, the DEA is not requiring law enforcement to hold or participate in take-back events. As discussed in the NPRM, law enforcement must determine how often available resources allow them to hold take-back events.

[3] Issue: A few commenters requested that the DEA allow other authorized collectors, such as retail pharmacies and reverse distributors, to become authorized to hold take-back events. One commenter stated that law enforcement officers' presence should be optional if there is a collection receptacle at the event that meets the specifications in the rule.

Response: If an authorized collector or other entity wishes to conduct a take-back event, the event must be held in partnership with law enforcement. 21 CFR 1317.65. Take-back events are intended to be limited-duration events that may take place at an unsecure location that is easily accessible to the public, such as a community center or town center. Given the likelihood of publicity and limited physical security at such locations, the DEA believes that it is important to ensure active law enforcement participation for the safety of the event participants and the community. The DEA believes that active law enforcement participation will help deter theft and reduce diversion risks. The presence of a collection receptacle at a take-back event does not preclude the need for law enforcement presence at the collection site because the publicity for the event increases the receptacle's visibility for drug seekers, thus increasing diversion risks.

[4] Issue: A number of entities expressed concern that the implementation of this rule will result in the cessation of DEA-sponsored national take-back events. These commenters felt that take-back events will be too costly for communities and law enforcement, and commenters suggested that the DEA continue take-back events and provide a transition plan from the national take-back events until implementation of the rule.

Response: The DEA-sponsored national take-back events were initiated as a means of providing safe and convenient disposal of pharmaceutical controlled substances by ultimate users until alternative options could be implemented. The DEA is committed to continuing national take-back events until the effective date of this final rule. The DEA believes that implementation of disposal methods is best tailored to local communities by local communities. The DEA encourages public and private partnerships to optimize the expanded disposal options in a cost-efficient manner.

[5] Issue: One commenter expressed concern that existing take-back events would likely be unable to continue under this rule. This commenter was concerned that the prohibition of sorting would cause a burden since non-controlled substances and packaging could not be sorted from controlled substances. This commenter stated that it will be overly burdensome for programs to handle all collected substances as schedule II controlled substances.

Response: The DEA does not intend for this rule to require changes to existing non-controlled substance take-back programs. The security measures required by this rule are the minimum necessary to ensure a safe and secure means of disposal of pharmaceutical controlled substances. It should be noted however, that law enforcement are not required to follow the physical security requirements for handling, sorting, or storing collected controlled substances. 21 CFR 1317.35. The physical security requirements applicable to law enforcement in the final rule at §§ 1317.35 and 1317.65 state that law enforcement "should" take certain measures; and that law enforcement "shall" appoint a law enforcement officer to oversee a take-back event and law enforcement officers "shall" maintain custody and control of the collected substances. Additionally, this rule provides a number of previously unavailable means of ultimate user disposal that are likely to decrease the frequency of and need for community take-back events. The DEA would like to clarify that comingling of controlled and non-controlled substances is permitted, but not required, and co-sponsors of take-back events may specify that only controlled substances will be accepted. Another method to alleviate the burdens would be to provide a separate receptacle for non-controlled substances at the take-back event. Additionally, as discussed in response to previous comments, this rule does not require that collected substances be in their original packaging, and law enforcement may discourage or prohibit ultimate users from disposing of original packaging into the collection receptacle for controlled substances at take back-events.

[6] Issue: One commenter indicated that municipalities and other organizations should be permitted to "take the lead" in organizing and conducting take-back events in conjunction with, and in the presence of, law enforcement. Other commenters raised concerns that such events conducted in partnership with local government and community groups would no longer be allowed, and that the requirements would prevent controlled substance take-back events from being held concurrently with other take-back events, such as for the disposal of hazardous waste and non-controlled substances.

Response: The rule permits any entity to partner with law enforcement to hold a pharmaceutical controlled substances take-back event. 21 CFR 1317.65(a). Municipalities or other organizations may partner with law enforcement as long as such events are conducted in accordance with all applicable laws and regulations pertaining to the disposal of pharmaceutical controlled substances. The DEA emphasizes that take-back events are intended to be one-time or periodic events held in a community center or other convenient and accessible location, and that there is no

prohibition against holding such events in conjunction with events for the disposal of other substances, such as hazardous waste or non-controlled pharmaceuticals.

J. Prohibition on Handling, Sorting, and Inventorying Inner Liner Contents and Mail-Back Package Contents (8 Issues)

[1] Issue: One commenter adamantly stated that collected substances should not be sorted under any circumstances. This commenter expressed concerns about diversion risks and the brokering of unused controlled substances.

Response: The DEA agrees that the diversion risks of handling, sorting, or inventorying collected substances outweigh any perceived benefits. The DEA has carefully considered all of the various commenters' concerns on the prohibition of handling, sorting, and inventorying inner liner contents and mail-back package contents, and will retain these prohibitions. As provided in §§ 1317.60(c) and 1317.70(f), inner liners shall be sealed *immediately* upon removal from the permanent outer container; sealed inner liners and returned mail-back packages shall not be opened, x-rayed, analyzed, or otherwise penetrated. Accordingly, their contents shall not be sorted or inventoried subsequent to being placed into a collection receptacle or mail-back package. To clarify this, § 1317.75(c) was modified to add the prohibition against individually handling substances after they have been deposited into a collection receptacle. These specific security measures are designed to help prevent and reduce the opportunities for diversion (including the re-introduction of tainted pharmaceutical controlled substances into the stream of commerce).

[2] Issue: Twenty-four commenters stated that pharmacists and other volunteers should be permitted to sort collected substances, particularly in the presence of law enforcement officers at take-back events. One commenter stated that the DEA should recognize the accountability, expertise, and experience of healthcare professionals, and the DEA should utilize these experts in an effort to broaden medication disposal efforts.

Response: The DEA appreciates the valuable expertise and experience of healthcare professionals, including pharmacists. The DEA has carefully considered the comments in response to the NPRM, and the remarks at the January 2011 public meeting. The DEA believes that the disposal methods outlined in this rule will provide ultimate users and their authorized representatives with expanded options to safely and securely dispose of unwanted, unused, and expired pharmaceutical controlled substances. Pursuant to § 1317.65, law enforcement may continue to conduct take-back events when a law enforcement officer maintains control and custody of collected substances at take-back events and only the ultimate user transfers controlled substances to law enforcement control and custody. However, non-law enforcement personnel may assist the law enforcement officer, and the final rule does not prohibit healthcare professionals from voluntarily polling ultimate users about the substances they are discarding or from assisting ultimate users to separate pharmaceutical controlled substances from non-controlled substances during the disposal process, and inventorying the non-controlled substances.

Furthermore, nothing in this rule prohibits law enforcement from partnering with authorized collectors or other entities to inventory or sort substances that have been collected by law enforcement provided that the collected substances remain under the control and custody of law enforcement. This final rule in § 1317.65(b) requires that law enforcement maintain control and custody of the collected substances from the time the substances are collected until secure transfer, storage, and destruction has occurred. Therefore, if law enforcement opts to inventory or sort collected substances within their possession, law enforcement should provide adequate security to prevent diversion or theft of controlled substances within their possession and control as a result of, or during, inventorying or sorting.

[3] Issue: Thirty-eight commenters stated that the DEA should permit collectors or certain non-registered persons to handle, sort, and inventory collected substances for data collection and research purposes. Many of these commenters urged the DEA to provide an exception to allow pharmacists and volunteers to inventory and sort controlled substances under the supervision of law enforcement officers. Numerous commenters stated that inventorying collected substances is crucial to determining a root cause analysis of medication waste. Others stated that such information could help guide prescribing practices and be used in educational settings. Several commenters stated that inventorying collected substances is necessary to determine outcome measures for grants for disposal programs. Also, several commenters stated that the DEA should provide an exception for Institutional Review Board-approved research projects.

Response: The DEA understands and appreciates these comments. As discussed in the preceding response, law enforcement has the discretion to partner with other entities to conduct a take-back event pursuant to § 1317.65(a). There are no restrictions on how law enforcement handles the collected substances so long as they maintain control and custody of the substance. Accordingly, law enforcement may inventory and sort substances that law enforcement collects. The diversion-related concerns present when authorized registrants collect controlled substances from ultimate users is not present when law enforcement collects substances from ultimate users. Taking into account the totality of the various risks and benefits, the DEA believes that this final rule imposes the minimum necessary controls to allow a secure and responsible means by which ultimate users can dispose of pharmaceutical controlled substances. Relying on its experience, and as discussed in the NPRM, the DEA finds that any potential benefits of allowing authorized collectors or unregistered persons to independently inventory or sort controlled substances after receipt from the ultimate user do not outweigh the risks of diversion, except when the controlled substances remain in the control and custody of law enforcement, as mentioned in the previous response.

Data collection is not impossible under the rule even though collected substances cannot be sorted or inventoried after they have been deposited into a collection receptacle or received by a collector through a mail-back package (unless the collection is conducted by law enforcement and the substances are within the custody and control of law enforcement). For example, authorized collectors may seek information voluntarily from ultimate users regarding the substances the ultimate user is disposing. And, data such as the weight of the inner liners, the number of ultimate users attending a take-back event, and the number of mail-back packages received in relation to the number of packages disseminated, can be useful measures. The rule only prohibits authorized collectors from physically handling the substances, such as taking the substances from the ultimate user, or sorting substances after the ultimate user has deposited them into a receptacle or mail-back package. 21 CFR 1317.70 and 1317.75.

[4] Issue: Twenty-two commenters stated that contents should be sorted to ensure adequate storage space. Several

commenters stated that packaging and pill bottles should be sorted since they are voluminous. Other commenters stated that non-controlled substances should be sorted from controlled substances.

Response: Pursuant to §§ 1317.70(b) and 1317.75(b), comingling of controlled and non-controlled substances is permitted, but it is not required. In addition, this rule does not require pharmaceutical controlled substances collected from ultimate users to be collected and stored in the original packaging, and collectors may institute procedures to prevent inadvertently collecting packaging. Authorized collectors may address adequacy of space issues by choosing not to collect comingled pharmaceutical controlled substances and non-controlled substances, refusing to accept the original controlled substance packaging, or by increasing destruction frequencies. In addition, the DEA has expanded the available storage options for practitioners in this final rule by allowing practitioners to store sealed inner liners and returned mail-back packages in a securely locked room with controlled access. 21 CFR 1317.05.

[5] Issue: A commenter noted that authorized collectors should have direct supervision over the substances that are placed into collection receptacles to prevent undesirable materials from being deposited into collection receptacles.

Response: Each potential authorized collector must weigh all of the potential risks and benefits in deciding whether to implement and manage any ultimate user disposal program, including any necessary steps to prevent the unwanted collection of regulated hazardous waste or otherwise undesirable materials, in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations. Authorized collectors may view what ultimate users deposit into collection receptacles, and they may ask what substances are being deposited. Although the actual disposal of a pharmaceutical controlled substance into a collection receptacle must be performed by an ultimate user in accordance with § 1317.30, the authorized collector maintains ultimate control over that receptacle and should institute necessary measures to protect against the collection of unwanted substances so long as such measures are consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations.

[6] Issue: Several commenters asked that the DEA permit pharmacy staff to deposit collected substances into collection receptacles. These commenters asked the DEA to consider situations where the pharmacy is completely blocked from the public (such as with a bullet-proof barrier).

Response: For the reasons discussed in the NPRM and in previous comment responses, the DEA declines to allow pharmacy staff to handle pharmaceutical controlled substances collected from ultimate users. The registered location of any retail pharmacy that wishes to become an authorized collector must satisfy the specifications for collection receptacles and inner liners. 21 CFR 1317.60 and 1317.75. If a retail pharmacy desires to be an authorized collector, that pharmacy shall only allow ultimate users (and others authorized to dispose of controlled substances on behalf of ultimate users) to deposit the pharmaceutical controlled substances directly into the collection receptacles in accordance with § 1317.30. The requirements of the collection receptacles were carefully considered and designed to limit the number of hands that handled the pharmaceutical controlled substances in order to prevent diversion and diversion opportunities, as well as to prevent the re-introduction of tainted pharmaceutical controlled substances into the closed system of distribution.

[7] Issue: Twenty commenters suggested that the DEA permit some sort of inspection for inner liner and mail-back package contents to ensure that unacceptable contents are removed, such as x-raying and scanning. These commenters were particularly concerned about mercury-containing thermometers, iodine-containing medications, medical sharps, compressed cylinders, and other hazardous waste. Other commenters expressed concern that by allowing comingling of substances in collection receptacles, employees may be subjected to hazardous conditions if unsafe or hazardous materials are deposited.

Response: The DEA understands and appreciates these concerns of the commenters; however, the DEA has concluded that allowing inspection of inner liners and mail-back packages presents an unacceptable risk of diversion. These issues were closely reviewed prior to the NPRM and re-reviewed in association with these comments. Whether an authorized collector comingles ultimate users' pharmaceutical controlled substances with non-controlled substances is within the discretion of that authorized collector. This rule does not mandate comingling. 21 CFR 1317.75. Each potential authorized collector must weigh all of the potential risks and benefits in deciding whether to implement and manage any ultimate user disposal program, including any necessary steps to prevent the unwanted collection of regulated hazardous waste or otherwise undesirable materials, in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations. As discussed in response to previous comments, collectors may control the substances collected, and they may view substances before they are deposited into collection receptacles. For additional commentary on hazardous waste disposal, please see comment section "Q.", entitled "Hazardous Materials Transportation and Hazardous Waste Destruction."

[8] Issue: Some commenters urged the DEA to require authorized collectors to provide clear instructions on what may and may not be placed in mail-back packages in order to reduce instances in which hazardous materials/waste may be inadvertently destroyed in a manner that is not consistent with environmental or other applicable laws or regulations due to the prohibition against opening or inspecting the contents of mail-back packages.

Response: The rule includes a requirement for the collector to provide packages with instructions indicating what substances are permitted to be included in the package. 21 CFR 1317.70. The rule does not require specific language for such instructions, which must ultimately be determined by the collector in a manner consistent with the rule.

K. Long-Term Care Facilities (LTCFs) (21 Issues)

Definitions and Terms Specific to LTCFs

[1] Issue: Commenters asked the DEA to clarify the meaning of "LTCF" with regard to assisted living facilities, hospice facilities, and residential care in private homes, as the meaning of LTCF often varies by State.

Response: LTCF is defined at § 1300.01(b) and "means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients."

[2] Issue: Commenters asked the DEA to clarify the meaning of "have resided" with regard to a LTCF's ability to dispose of controlled substances on behalf of residents.

Response: The phrase "have resided," is utilized in the Disposal Act, but was not defined by Congress. The DEA has

not determined a need to apply a technical definition for this phrase apart from its ordinary meaning. The DEA understands the ordinary meaning of "have resided" to be typically understood as persons who have died or otherwise recently departed a location without manifesting intent to return. Thus, for example, as discussed in response to issue [7] below, when a LTCF resident is transferred to another facility, the resident "has resided" at the LTCF, and the LTCF may dispose of the former resident's pharmaceutical controlled substances in an authorized collection receptacle. 21 CFR 1317.30.

Registration of Collection Receptacles at LTCFs

[3] Issue: Commenters asked the DEA to clarify whether an authorized LTCF location where an authorized collector maintains a collection receptacle would be considered a "registered location" of the retail pharmacy.

Response: The location of the collection receptacle is both a registered location and a controlled premise. It is a registered location of the authorized hospital/clinic or retail pharmacy because the authorized collector may only install and manage a collection receptacle at a LTCF pursuant to the authority granted by the DEA, and they are limited at that location to conducting only those activities that are specifically authorized and required under this rule as necessary to the installation and maintenance of that authorized collection receptacle. LTCFs with authorized collection receptacles are "controlled premises" pursuant to 21 U.S.C. 880(a) and 21 CFR 1316.02(c); accordingly, the DEA may enter LTCFs and conduct administrative inspections in furtherance of, and in carrying out, the responsibilities charged to the DEA by the CSA pursuant to 21 U.S.C. 880(b) and 21 CFR 1316.03.

Disposal Methods and Procedures at LTCFs

[4] Issue: A commenter asked the DEA if LTCFs may use an on-site method of destruction. Three commenters specifically asked if LTCFs may continue their current drug disposal method of "sewering." Other commenters asked the DEA to clarify how existing methods of disposal utilized by LTCFs will be impacted by this rule and to provide for an interim method of disposal for LTCFs.

Response: Although the DEA appreciates the commenters' concerns, the DEA cannot comment on each potential method of disposal occurring at LTCFs prior to these regulations. The implementation of authorized disposal methods for ultimate users is strictly voluntary and, with the exception of law enforcement-sponsored programs, generally such programs have no lawful means of existence prior to the effective date of this rule. It is important to note that this rule provides additional options for disposal and does not prohibit any methods currently used by LTCFs that are consistent with Federal, State, tribal, and local laws and regulations. For example, LTCFs are not prohibited by this final rule from destroying patients' unwanted pharmaceutical controlled substances at the LTCF, on behalf of the resident patients, in accordance with applicable Federal, State, tribal, and local laws and regulations, including environmental laws and regulations. However, as explained further below, the DEA has considered the diversion risks and determined that the installation and maintenance of collection receptacles by authorized hospitals/clinics and retail pharmacies is the most secure and responsible means by which registrants may collect and dispose of LTCF residents' pharmaceutical controlled substances.

As stated in § 1317.90(a), the requirement to render controlled substances "non-retrievable" applies only to DEA registrants that destroy controlled substances. The "non-retrievable" language does not apply to ultimate users. As discussed in the NPRM, the DEA does not believe that "sewering" would render a pharmaceutical controlled substance "non-retrievable." However, such a requirement would not apply to a LTCF unless the LTCF is itself a registrant and destroying its own pharmaceutical controlled substance stock pursuant to § 1317.05(a).

[5] Issue: Many commenters indicated that the DEA should provide LTCFs with additional options for disposal of controlled substances on behalf of residents. Approximately fifteen commenters asked the DEA to expand which registrants are permitted to manage collection receptacles at LTCFs. Seven commenters asked the DEA to permit LTCFs to use mail-back packages. Several commenters stated that LTCFs should be allowed to use the same disposal options that this rule affords ultimate users.

Response: As previously discussed, this rule in § 1317.40 expands the types of registrants that may be authorized as collectors, and permitted to manage and maintain collection receptacles at LTCFs. In addition to retail pharmacies (including "closed-door pharmacies" that service LTCFs), hospitals/clinics with an on-site pharmacy may maintain collection receptacles at LTCFs. Furthermore, the options available to all ultimate users to dispose of their pharmaceutical controlled substances are also available to LTCF residents. As ultimate users (defined in 21 U.S.C. 802(27) as persons who have lawfully obtained, and who possess, a controlled substance for their own use or for the use of a member of their household), LTCF residents may avail themselves of all disposal methods made available by this rule to ultimate users, including participation in authorized mail-back programs. For example, on behalf of an LTCF resident, an LTCF employee may place the resident's unwanted pharmaceutical controlled substances in a mail-back package, seal it, and deposit it into the facility's outgoing mail system. Care should be taken to ensure that LTCF residents' use of mail-back programs does not result in the accumulation of pharmaceutical controlled substances in a single location susceptible to internal or external diversion threats.

The DEA has carefully considered the risks and benefits of collection activities at LTCFs. Among the DEA's specific considerations were that LTCFs typically have large volumes of controlled substances on-site and that they are typically not registered with the DEA. The DEA also specifically considered the risks and benefits associated with LTCF personnel disposing of pharmaceutical controlled substances on behalf of persons who reside or have resided at that LTCF. The DEA determined that in order to adequately protect the public health and safety, and to prevent diversion, the collection of such substances must be limited to certain registrants that are well-equipped to handle the unique circumstances surrounding the disposal of controlled substances at LTCFs. After careful deliberation, the DEA determined such registrants should be limited to retail pharmacies and hospitals/clinics with an on-site pharmacy. 21 CFR 1317.40. In making its determination, the DEA took consideration of the fact that hospitals/clinics with on-site pharmacies, and retail pharmacies, routinely dispense large volumes of controlled substances in a public setting. Additionally, many hospitals/clinics with on-site pharmacies and retail pharmacies have experience working closely with LTCFs or have well-established, on-going relationships with LTCFs. For example, many retail pharmacies and hospitals/clinics directly deliver pharmaceutical controlled substances to LTCF residents, some retail pharmacies have developed

expertise in dispensing substances at LTCFs via an automated dispensing system (ADS) (i.e., mechanical systems that perform operations or activities relative to the dispensing of medications), and some LTCFs share common management or ownership with hospitals/clinics.

The DEA recognizes that other types of registrants also have relationships with LTCFs, and considered authorizing other types of registrants to install and manage collection receptacles at LTCFs. However, after careful consideration, the DEA determined that the presence of certain factors that increase opportunities for diversion in the specified circumstances weigh against further expanding the types of registrants that may collect at LTCFs.

Specifically, the DEA declines to allow reverse distributors to install and maintain collection receptacles at LTCFs because reverse distributors are at the end of the supply chain. It would be contrary to the public health and safety and pose an increased risk of diversion to authorize a reverse distributor to independently install and maintain a collection receptacle at an LTCF, remove the inner liner, transport collected substances to the final destruction location, and ensure they are destroyed. One of the principal factors considered by the DEA in coming to this conclusion is the fact that in such a situation, the reverse distributor would be the sole registrant to maintain the only records of installation, removal, and destruction. Such an authorization would be contrary to the closed system of distribution where each registrant who handles controlled substances serves as a source of verification for the other registrants that handle the same substances, thus ensuring that controlled substances reach their intended destination with accountability and a reduced risk of diversion. The regulations implemented by this final rule specifically utilize this system of checks for collection activities at LTCFs. Retail pharmacies and hospitals/clinics with an on-site pharmacy are registrants. As established in this final rule, when retail pharmacies and hospitals/clinics maintain collection receptacles at an LTCF, they may not transport sealed inner liners. Rather, they are expected to transfer sealed inner liners to another registrant for destruction pursuant to § 1317.05(c)(2)(iv). Two-registrant integrity allows the DEA to verify and cross-check each registrants' records. Conversely, LTCFs and destruction facilities are generally not registrants. Therefore, if a reverse distributor were authorized to install and maintain collection receptacles at LTCFs, and also pick-up, transport, and destroy sealed inner liners from LTCFs, the DEA would be unable to verify the reverse distributor's removal or destruction records with another registrant's records. Allowing this would not meet the two-registrant integrity requirement that is the minimum required to ensure accountability, particularly when collected substances are destined for destruction.

As discussed in responses to other comments, because LTCFs are generally not registrants, the DEA is unable to allow such facilities to be authorized collectors for the purpose of disposing ultimate user-collected substances, or handle disposed substances on behalf of another registrant. We note that although LTCFs may not use mail-back packages or administer a mail-back program, ultimate users who reside in LTCFs may use mail-back packages under this rule. 21 CFR 1317.30 and 1317.70.

[6] Issue: One commenter asked the DEA to allow a LTCF resident, or the resident's legal representative, to dispose of controlled substances through all available means, whether the resident is alive or deceased.

Response: All means of disposing of pharmaceutical controlled substances are available to ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property, including those ultimate users who reside, or have resided, in a LTCF. 21 CFR 1317.30.

[7] Issue: Commenters also asked the DEA to address how LTCFs should handle situations in which a resident is transferred to a hospital and the resident leaves unwanted medication at the LTCF.

Response: Pursuant to the Disposal Act, Congress provided the DEA authority to authorize LTCFs only to "dispose of controlled substances on behalf of ultimate users who reside, or have resided," at the LTCF. 21 CFR 1317.30. When a LTCF resident is transferred to a hospital or other facility, the resident "has resided" at the LTCF, and if the medication is intentionally left at the LTCF, it is "unwanted," and the resident has discontinued use. Accordingly, the LTCF may dispose of the former resident's pharmaceutical controlled substances by depositing the substances into an authorized collection receptacle immediately, but no longer than three business days after discontinuation of use. 21 CFR 1317.80.

[8] Issue: Several commenters indicated that the three-day disposal provision for LTCFs is overly restrictive and potentially costly for residents. These commenters stated that three days is too short a time span and will result in residents being forced to purchase additional medications when there is a short break in use as a result of illness, hospitalization, or a trial dosage reduction. One commenter stated that three days is not a long enough time period to determine if the patient may need the medication again in the future.

Response: The DEA declines to extend the timeframe for LTCFs to dispose of pharmaceutical controlled substances on behalf of LTCF residents. As previously discussed, LTCFs are required to dispose of pharmaceutical controlled substances "immediately, but no longer than three business days after the discontinuation of use" in § 1317.80(a). With respect to "discontinuation of use," the final rule modifies § 1317.80(a) to include a permanent discontinuation as directed by the prescriber, as a result of the resident's transfer from the LTCF, or as a result of death. The DEA cannot readily foresee a circumstance where a short break in use as a result of illness, short-term hospitalization, or a trial dosage reduction would be considered a discontinuation of use. Also, if the prescriber has not yet determined whether or not a medication is needed in the future, then it is likely that there has not yet been a "discontinuation of use."

Collection Receptacle Maintenance at LTCFs

[9] Issue: Fifteen commenters indicated that the requirement to have two employees of the authorized collector retail pharmacy remove and install inner liners is burdensome, and it will discourage retail pharmacies from installing and maintaining collection receptacles at LTCFs. The commenters suggested that the DEA allow LTCF personnel to remove, store, and replace the inner liners. A commenter suggested that LTCF personnel be permitted to sort out non-controlled substances to reduce the amount of material collected in the receptacles.

Response: As explained above, the DEA is amending the final rule to allow flexibility in the requirement that two employees of the authorized collector be present for the installation and removal of inner liners at LTCF collection receptacles. As amended, the final rule in § 1317.80(c) provides that installation, storage, and removal may also be performed by one employee of the authorized collector and one supervisor-level employee of the LTCF (e.g., a charge nurse, supervisor, or similar employee) designated by the

hospital/clinic or retail pharmacy authorized to collect at that location. Hospitals/clinics and retail pharmacies that choose the flexibility allowed by using a supervisor-level employee from the LTCF are reminded that they are still ultimately responsible for the security of the collected substances, as well as keeping complete and accurate records and fulfilling reporting requirements. The contents of the inner liners may not be sorted once deposited into a receptacle, pursuant to § 1317.75(c), but, as previously stated, § 1317.75(b) states that comingling of controlled and non-controlled substances is permitted but not required. Therefore, the authorized collector or the LTCF may choose to limit the collected substances to pharmaceutical controlled substances to maximize available space in the collection receptacle. This can be easily accomplished at LTCFs because trained medical personnel will be depositing substances into collection receptacles and should be well-equipped to sort controlled substances from non-controlled substances before depositing the substances into a collection receptacle. Also, as previously discussed, inner liners may be stored at LTCFs in accordance with § 1317.80(d). Another available option to manage volume and the prohibition of on-site storage is for an authorized collector to maintain more than one collection receptacle at an LTCF.

[10] Issue: Commenters asked the DEA to clarify whether reverse distributors are permitted to pick up collection receptacle inner liners from an authorized LTCF location.

Response: In accordance with § 1317.05(c)(2)(iv), reverse distributors may pick up inner liners from collection receptacles located at authorized LTCFs, and reverse distributors may receive the inner liners that are sent to the reverse distributor's registered location from the LTCF by common or contract carrier. However, the inner liner must be removed from the collection receptacle under the supervision of either two employees from the hospital/clinic or retail pharmacy that is managing the receptacle, or one employee from the managing hospital/clinic or retail pharmacy and one supervisor-level employee of the LTCF (e.g., a charge nurse, supervisor, or similar employee) designated by the authorized collector, pursuant to § 1317.80(c).

[11] Issue: Several commenters expressed concern regarding the transportation and storage of substances collected from LTCFs, specifically with regard to the safety of employees who transport collected substances from LTCFs and logistical difficulties (e.g., storage space) that may result in fewer retail pharmacies willing to install and maintain collection receptacles at LTCFs.

Response: As previously discussed, hospitals/clinics and retail pharmacies may store sealed inner liners at the LTCF in a securely locked, substantially constructed cabinet, or a securely locked room with controlled access for up to three business days pursuant to § 1317.80(d). However, the DEA encourages LTCFs and authorized collectors managing collection receptacles at LTCFs to exhaust other, more secure, alternatives, including: Arranging regularly scheduled pick-ups by reverse distributors or common or contract carriers to coincide with removal of the inner liner or delivery of controlled substances to the LTCF; operating multiple collection receptacles at a LTCF to help minimize overflow; and pursuing ultimate user disposal options through members of the patients household or other persons lawfully entitled to dispose of a LTCF patient's property. The DEA believes these alternatives are better options than storage at LTCFs. LTCFs are generally unregistered locations with large quantities of highly pilferable controlled substances in high doses. The DEA carefully weighed the benefits with the risks of allowing storage at LTCFs, including the potential for creating a new avenue of diversion at a location over which the DEA has limited regulatory oversight. However, in consideration of the circumstances unique to LTCFs, and to ease the burden on LTCFs and authorized collectors, the DEA is permitting in this final rule sealed inner liners to be stored at LTCFs in accordance with § 1317.80(d).

The DEA has also relaxed the rule, in § 1317.80(c), to allow flexibility in the two-person integrity requirement with respect to collection at LTCFs by allowing authorized hospitals/clinics and retail pharmacies to designate a supervisory-level employee of the LTCF as one of the authorized persons to conduct or oversee the installation, removal, storage and transfer inner liners. However, the authorized collector may opt to have two or more of its own employees perform or oversee these activities. In addition, authorized collectors that are practitioners may not themselves transport collected substances to a destruction location. 21 CFR 1317.05. Rather, the practitioner may destroy the collected substances by delivering the sealed inner liners to a reverse distributor or distributor's registered location by common or contract carrier, or a reverse distributor or distributor may pick-up sealed inner liners at the LTCF. 21 CFR 1317.05.

[12] Issue: Commenters indicated that the installation and maintenance of collection receptacles by retail pharmacies at LTCFs will likely result in considerable costs, burdens, and other liabilities, and, as such, few retail pharmacies will be willing to install and maintain collection receptacles at LTCFs, and few LTCFs will want to bear the costs.

Response: The DEA carefully considered the costs associated with all aspects of disposal, along with all other considerations such as convenience, safety, and the risk of diversion, including the security and design of collection receptacles. As discussed in the preamble to this rule, participation in any disposal program for ultimate users is voluntary and the DEA is not authorized to impose the burden of costs upon any specific entity. As such, each registrant that may become authorized as a collector must individually weigh the associated benefits and burdens in determining whether to do so. In order to accommodate LTCF residents, the DEA has expanded the authorized collectors that may maintain collection receptacles at LTCFs to include certain hospitals/clinics and retail pharmacies. 21 CFR 1317.40. The DEA has also relaxed the two-person integrity requirements with respect to LTCFs, and is allowing for storage of sealed inner liners at the LTCF in order to reduce the burdens on hospitals/clinics and retail pharmacies. 21 CFR 1317.80. These are the minimum requirements to ensure that safety and security of LTCF residents, and to deter and detect diversion.

[13] Issue: Several commenters expressed concerns over liability when a collection receptacle is installed at a LTCF because the collector pharmacy is fully responsible for the receptacle but does not have constant, direct supervision over it. The commenters did not specify what type of liability (e.g., criminal, civil, administrative, etc.) was concerning, however, the commenters suggested that the DEA provide the authorized collector retail pharmacies a release from responsibility when installing and maintaining a collection receptacle at a LTCF.

Response: It would be contrary to the public health and safety to authorize an entity to collect pharmaceutical controlled substances from ultimate users, and also absolve that entity from any responsibility for such collection. In any event, the DEA does not have authority to provide a general release from liability to all hospitals/clinics and retail pharmacies that apply for, and are

authorized to, install and maintain a collection receptacle at a LTCF as part of their registered activities. Part of the purpose in authorizing only certain hospitals/clinics and retail pharmacies to install and maintain collection receptacles at LTCFs is to ensure that a responsible registrant under the regulatory authority of the DEA is charged with ensuring the secure and responsible collection of pharmaceutical controlled substances at LTCFs. As such, with regard to authorized collection receptacles at LTCFs, all responsibility for such receptacles, including compliance with the CSA and DEA regulations, rests with the hospital/clinic or retail pharmacy authorized to install and maintain the collection receptacle. The DEA designed the physical security controls and other accountability measures (e.g., recordkeeping, two-person integrity, regular monitoring by LTCF personnel) for collection receptacles at LTCFs in an effort to minimize the risk of diversion in circumstances where constant, direct supervision by the hospital/clinic or retail pharmacy is not feasible. In the event an authorized collector knows or has reason to know diversion from collection receptacles is occurring, the authorized collector must take steps to prevent the diversion, including reporting to the appropriate authorities pursuant to §§ 1301.74 and 1301.76. Such action stems from the responsibility to provide effective controls and procedures to guard against theft and diversion as required by § 1301.71(a).

Security at LTCFs

[14] Issue: One commenter asked the DEA to clarify the required security measures for collection receptacles at LTCFs. Two commenters asked the DEA to outline what LTCF staff must do to monitor the collection receptacle.

Response: The required security measures outlined in §§ 1317.60 and 1317.75 that apply to all collection receptacles also apply to those located at LTCFs unless stated otherwise in the rule. The rule provides that a collection receptacle must be located in an area that is regularly monitored by LTCF personnel. 21 CFR 1317.75(d)(2)(iii). "Regularly monitored" has its ordinary meaning. The goal of this requirement is to prevent diversion; accordingly, specific examples would depend on individual circumstances. However, a sub-basement or other seldom-used storage area would not be considered to be regularly monitored by LTCF personnel because those areas are not routinely accessed by LTCF personnel in the course of conducting the everyday the business of the LTCF. The requirement that the receptacle be "regularly monitored" is designed to prevent diversion opportunities, and to ensure that diversion would be detected as soon as possible. Only authorized collectors may install, manage, and maintain collection receptacles at LTCFs, therefore, only the authorized collectors may remove, seal, transfer, and store or supervise the removal, sealing, transfer, and storage of sealed liners. 21 CFR § 1317.80(b). The authorized collector is responsible for ensuring the regular monitoring of LTCF personnel and ensuring the appropriate security procedures are in place at LTCFs in the event of suspected tampering or diversion. If tampering or diversion is suspected, LTCF personnel should notify law enforcement authorities and the authorized collector, as the circumstances warrant.

[15] Issue: Eight commenters expressed concern for the safety of residents of LTCFs. These commenters are concerned that collection receptacles in LTCFs may affect resident safety due to these locations becoming a potential target for drug seekers. Five commenters suggested that the DEA increase penalties for offenses related to collected substances at LTCFs. One commenter encouraged the DEA not to authorize the installation of collection receptacles at LTCFs because their presence may compromise the safety of staff and residents.

Response: Congress authorized the DEA to implement regulations authorizing LTCFs to dispose of controlled substances on behalf of ultimate users who reside, or have resided, at such LTCFs. The DEA has considered the risks associated with authorizing the installation and maintenance of collection receptacles at LTCFs, as discussed in the NPRM, and determined that the security measures described in this rule, in § 1317.75, are the minimum required to ensure the safe and secure disposal of pharmaceutical controlled substances at LTCFs. If authorized collectors or LTCFs believe the presence of a collection receptacle endangers the safety or security of the LTCF residents under particular circumstances, they should take additional measures as appropriate to ensure the safety of the residents and staff, and to ensure the security of the collected substances. And, if those other alternatives have failed to abate the observed dangers, the authorized collector can choose to discontinue placing a collection receptacle at a particular LTCF.

The CSA already provides for administrative, civil, and criminal sanctions for individuals and registrants that violate the CSA. The DEA is without authority to mandate enhanced penalties for violations of the CSA that involve LTCFs.

[16] Issue: Two commenters expressed concern about security issues due to potential stockpiling of unwanted controlled substances at LTCFs. These commenters listed the following reasons as the bases for their concerns: The three business day disposal requirement, the lack of guidance on the frequency at which inner liners must be removed, the two employee requirement for installing and removing inner liners, and lack of a realistic alternative for disposal if no retail pharmacy manages a collection receptacle at the facility. These commenters stated that stockpiling would increase diversion risks and would be a liability for the LTCF.

Response: As discussed in the NPRM and in response to comments in this final rule, these new regulations *expand* the options available to ultimate users (including LTCF residents) to dispose of excess pharmaceutical controlled substances. A resident, a member of the resident's household, and an individual lawfully entitled to dispose of the decedent resident's property all may dispose of a resident's pharmaceutical controlled substances using any of the several methods of disposal mentioned here. 21 CFR 1317.30.

If there is a collection receptacle at the LTCF, the collected substances should not accumulate under the procedures outlined in this rule. One of the primary goals of the procedures outlined in these new regulations is to prevent the accumulation of collected substances while awaiting destruction. For example, LTCFs are required to deposit pharmaceutical controlled substances into collection receptacles "*immediately,* but no longer than three business days after the discontinuation of use," pursuant to § 1317.80(a). Although the DEA has not specifically proposed regulations regarding the frequency at which the inner liners of collection receptacles must be replaced, an authorized collector that maintains a collection receptacle at a LTCF should coordinate with that LTCF in order to ensure that the inner liners are replaced at a frequency suitable to ensure continuous safe and secure disposal by the LTCF. This type of coordination is part of an authorized collector's responsibility to provide effective controls and procedures to guard against theft and diversion as required by § 1301.71(a). Controls against diversion are ineffective when stockpiling of unused pharmaceutical controlled

substances at a LTCF is the result of an authorized collector's failure to adequately maintain a collection receptacle. It is emphasized that there is no limit on the number of collection receptacles that an authorized collector may install and maintain at a LTCF. Accordingly, the number of receptacles may be increased to account for volume and/or pick-up schedules.

As previously discussed, this rule allows but does not require authorized collectors to store sealed inner liners at a LTCF for up to three business days in a securely locked, substantially constructed cabinet or a securely locked room with controlled access, pursuant to § 1317.80(d). However, the DEA encourages collectors to schedule inner liner removals and installations to coincide with existing LTCF visits when possible, for example, arranging a routine system in which medication deliveries coincide with the removal and transfer of sealed inner liners for appropriate destruction, thereby making sealed inner liner storage unnecessary.

Other Concerns Regarding LTCF Drug Disposal

[17] Issue: One commenter expressed concern that the DEA's assumption that controlled substances in LTCFs have been dispensed to, and are thus the property of, a resident may result in the reluctance of LTCFs to use automated dispensing systems to dispense to an ultimate user as needed.

Response: Congress has defined "dispense" to mean the delivery of a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner. 21 U.S.C. 802(10). The DEA is bound to this definition. Accordingly, once a pharmaceutical controlled substance has been dispensed to a patient, including a resident of a LTCF, the substance is the property of the patient or ultimate user. The use of an automated dispensing system (ADS) does not change the analysis. An ADS is conceptually similar to a vending machine. A pharmacy stores bulk drugs in the machine in separate bins or containers and programs and controls the ADS remotely. Only authorized staff at the LTCF would have access to its contents, which are dispensed on a single-dose basis at the time of administration pursuant to a prescription. The ADS electronically records each dispensing, thus maintaining dispensing records for the pharmacy. Because the controlled substances are not considered dispensed until the system provides them, substances in the ADS are counted as pharmacy stock. Even though ADSs in LTCFs are used to dispense medications for administration on an as-needed basis (i.e., one dose at a time) in accordance with a practitioner's prescription, the substance is the property of the LTCF resident once dispensed. Even though a pharmaceutical controlled substance is the property of the ultimate user once dispensed from the ADS, the LTCF may dispose of the medication on behalf of an ultimate user who resides, or has resided at an LTCF by depositing the medication into an authorized collection receptacle located in the LTCF. 21 CFR § 1317.80. Controlled substances held within the ADS that have not been dispensed to a patient are considered inventory or stock of the registrant and therefore must be disposed of by the registrant in accordance with 21 CFR § 1317.05.

[18] Issue: Commenters indicated that LTCFs may be serviced by multiple pharmacies which could result in controlled substances from multiple servicing pharmacies being disposed of in a single receptacle installed by one such pharmacy and asked the DEA to clarify how to manage such situations (e.g., how other pharmacies would contribute to the efforts of collection; whether drugs dispensed by other pharmacies can be disposed of in the receptacle). Commenters also asked the DEA to clarify the process and requirements for the collection receptacle when the LTCF changes ownership or pharmacy service.

Response: This rule allows certain hospitals/clinics and retail pharmacies to become collectors at LTCFs pursuant to § 1317.40, after properly modifying their registrations, in accordance with part 1301. This rule does not require authorized collectors to have any pre-existing or other relationships with the LTCF. Depending on the circumstances, there may be more than one authorized collection receptacle at a single LTCF. Other than the regulations specific to the installation and maintenance of collection receptacles and all related laws and regulations, the DEA is not, at this time, regulating the relationship between the authorized collector and the LTCF, or between multiple authorized collectors that have relationships with the LTCF, and the DEA is not prohibiting collectors from refusing to collect any certain specified pharmaceutical controlled substances. However, conduct that implements exclusionary or anti-competitive actions at an LTCF that adversely affects competing registrants will be referred to the appropriate authorities for action. It is important to remind authorized collectors with collection receptacles at LTCFs that they are solely responsible for the security, integrity, and maintenance of their own collection receptacles and they must be vigilant and ensure complete accountability for any pharmaceutical controlled substances they collect at LTCFs. If a LTCF changes ownership and changes its name, the authorized collector must modify its registration in accordance with § 1301.51(b)(2) to reflect the new name of the LTCF.

[19] Issue: One commenter specifically suggested that the DEA restrict collection receptacles at LTCFs to the collection of controlled substances and to require signage indicating such in order to ensure compliance with State Medicaid program directives requiring the recovering of non-controlled drugs for potential credit or restocking.

Response: The DEA is modifying the final rule in §§ 1317.70(b) and 1317.75(b) to clearly indicate that comingling of controlled and non-controlled substances is permitted but not required. The DEA's authority is limited to controlled substances. As such, the DEA cannot promulgate regulations requiring signage pertaining to compliance with State Medicaid programs or any other programs outside the DEA's scope of authority, but collectors are free to post signage pertaining to non-controlled substances. Moreover, collectors may post any information they deem appropriate for the safe and secure disposal of controlled substances. All collections that may include pharmaceutical controlled substances, whether comingled or not, must be consistent with this rule, and all other applicable Federal, State, tribal, and local laws and regulations.

[20] Issue: Two commenters referenced prescription labeling requirements that prohibit the transfer of controlled substances to a person other than to whom it was prescribed. The commenters asked for clarification regarding such transfers and transfers to a person lawfully entitled to dispose of an ultimate user decedent's property. The commenters indicated that such transfers could be considered dispensing and therefore outside of the authority of the LTCF employee. Additional concerns included State laws that prohibit LTCFs from giving back unused controlled substances to the resident or another person and those that require such substances to be destroyed at the facility.

Response: Pursuant to 21 U.S.C. 825(c), FDA regulations require that when a schedule II, III, or IV controlled substance is dispensed to or for a patient, the label include a warning that Federal law "prohibits the transfer of

the drug to any person other than the patient for whom it was prescribed." 21 CFR 290.5. This is not a regulation within the DEA's authority; however, the regulation does not appear to be inconsistent with the Disposal Act. As described in detail in the NPRM, the CSA expressly provides that it is unlawful to distribute a controlled substance except as provided. The CSA permits an ultimate user who has lawfully obtained a pharmaceutical controlled substance to deliver the controlled substance to another person for the purpose of disposal only if that person is authorized to receive such substance and in accordance with the implementing regulations. The CSA further provides that if a person dies while lawfully in possession of a pharmaceutical controlled substance, any person lawfully entitled to dispose of the decedent's property may deliver the substance to another person for the purpose of disposal under the same conditions described above. Pursuant to the Disposal Act, a LTCF may dispose of a resident's pharmaceutical controlled substances in accordance with these regulations. When a LTCF deposits a pharmaceutical controlled substance into a collection receptacle in accordance with these regulations, it is not "dispensing." As discussed, "dispense" means the delivery of a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner. 21 U.S.C. 802(10).

With regard to State laws, the DEA cannot comment on the laws of each individual State because these laws are outside of the DEA's purview. The DEA is tasked by Congress with implementing Federal laws related to controlled substances. However, nothing contained within the DEA regulations should be construed as authorizing or permitting any person to do any act he/she is not authorized or permitted to do under other Federal laws or under the law of the State in which he/she desires to perform such act, nor shall compliance with the DEA's regulations be construed as compliance with other Federal or State laws. 21 CFR 1307.02.

[21] Issue: One commenter asked the DEA to discuss whether the HHS reviewed the rule with regard to their "anti-kickback" statute. This commenter expressed concern over whether or not the HHS would permit a retail pharmacy that dispenses to a particular LTCF to provide collection services to the same LTCF free of charge.

Response: All collection and disposal of controlled substances must be conducted in accordance with all applicable laws and regulations, including HHS regulations. This rule neither imposes requirements or regulations for the funding of disposal programs, nor imposes requirements or regulations regarding fees that registrants may charge to operate disposal programs.

L. Disposing on Behalf of Ultimate Users (Other Than Residents of LTCFs) (3 Issues)

[1] Issue: Commenters asked the DEA to clarify how hospitals, schools, summer camps, or other entities may dispose of controlled substances that unintentionally end up in their possession (e.g., when persons abandon controlled substances and return is not possible). Also, several commenters asked the DEA to explain how controlled substances may be disposed of when the ultimate user or other authorized person is unable to dispose of them due to death or incapacitation.

Response: The DEA has limited authority regarding who may deliver pharmaceutical controlled substances for the purpose of disposal. Pursuant to the Disposal Act, Congress granted the DEA authority to authorize three groups of people to deliver controlled substances for the purpose of disposal. First, an "ultimate user" who has lawfully obtained a pharmaceutical controlled substance may deliver the substance to another person who is authorized to accept it for the purpose of disposal. The CSA defines "ultimate user" as "a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household." 21 U.S.C. 802(27). Second, if a person dies while lawfully in possession of a pharmaceutical controlled substance, any person lawfully entitled to dispose of the decedent's property may deliver the substance to another person for the purpose of disposal. 21 CFR 1317.30. Third, LTCFs may dispose of pharmaceutical controlled substances on behalf of ultimate users who reside or have resided at such facilities. 21 U.S.C. 822(g). The DEA has no authority to expand the types of individuals and entities lawfully permitted to deliver pharmaceutical controlled substances for the purpose of disposal. The DEA has carefully considered its statutory authority, diversion risks, public safety, convenience for ultimate users, and the interests of the public. The DEA believes that this rule provides safe and convenient disposal options for ultimate users and other authorized persons. The DEA understands that there may be circumstances where there is no authorized person to dispose of the controlled substances, such as when controlled substances are abandoned at a school or summer camp, and return to the ultimate user is not feasible. In such instances, the affected entities should contact local law enforcement or their local DEA office for guidance on proper disposal procedures.

[2] Issue: The DEA received a number of comments regarding the lack of provisions for hospice and other homecare programs to dispose of controlled substances on behalf of patients. According to the commenters, many hospices have written policies and procedures in place for the management and disposal of controlled substances in the patient's home. Given the available options for ultimate user disposal, commenters expressed concern that hospices may no longer be able to assist families in disposing of a deceased patient's drugs. Commenters suggested that the DEA allow hospice staff to dispose of a decedent's controlled substances by sewering or landfill disposal.

Response: The DEA appreciates the difficulties facing home hospice staff with regard to the disposal of pharmaceutical controlled substances. The Disposal Act provides that "if a person dies while lawfully in possession of a controlled substance for personal use, any person lawfully entitled to dispose of the decedent's property may deliver the controlled substance to another person for the purpose of disposal under the same conditions as provided" for ultimate users. 21 U.S.C. 822(g)(4). Otherwise, home hospice and homecare personnel are not authorized to receive pharmaceutical controlled substances from ultimate users for the purpose of disposal. In addition, an ultimate user includes "a person who has lawfully obtained, and possesses, a controlled substance for his own use or *for the use of a member of his household.*" 21 U.S.C. 802(27). Accordingly, a member of the hospice patient's household may dispose of the patient's pharmaceutical controlled substances, but the home hospice or homecare provider cannot do so unless otherwise authorized by law (for example, under state law) to dispose of the decedent's personal property.

This rule provides a number of options for ultimate users and persons lawfully entitled to dispose of a deceased ultimate user's property to safely and securely dispose of pharmaceutical controlled substances, yet the DEA does not require ultimate users to utilize these options. However, it is unlawful for ultimate users to transfer pharmaceutical controlled

substances to unauthorized persons, and it is unlawful for unauthorized persons to receive such substances. It is also unlawful for any person to possess a controlled substance unless authorized to do so under the CSA (i.e., an ultimate user, an entity registered with the DEA, or an entity exempt from registration with the DEA). 21 U.S.C. 844(a). Home hospice and other homecare providers are encouraged to assist their patients, and their patients' families, in disposing of pharmaceutical controlled substances in accordance with the CSA and its implementing regulations. While education is paramount, home healthcare agencies are also encouraged to partner with authorized collectors to promote or jointly conduct mail-back programs.

[3] Issue: One commenter asked the DEA to clarify the authority for a hospice employee to utilize a LTCF's collection receptacle for the disposal of controlled substances of a LTCF resident who is also a patient of the hospice.

Response: This rule does not specifically address hospice care or hospice employees, who are typically not registrants. As discussed, it is unlawful to possess a controlled substance unless authorized to do so under the CSA. 21 U.S.C. 844(a). The DEA has, however, provided options for the disposal of pharmaceutical controlled substances by a LTCF on behalf of a person who resides, or has resided, at the LTCF, regardless of whether or not that person is also receiving hospice care. The Disposal Act authorized the Attorney General to allow LTCFs to dispose of controlled substances on behalf of ultimate users who reside, or have resided, at the LTCF, in a manner determined by the Attorney General. 21 U.S.C. 822(g)(3). LTCF is defined as "a nursing home, retirement care, mental care, or other facility or institution which provides extended health care to resident patients." 21 CFR part 1300. Congress specifically allowed the Attorney General to consider permitting LTCFs to dispose of pharmaceutical controlled substances on behalf of LTCF residents. This allowance did not extend to other persons who are simply attending to a person who is resident of the LTCF. As such, a hospice employee is not authorized to dispose of pharmaceutical controlled substances on behalf of a person who resides or has resided at a LTCF.

M. Registrant Return, Recall, and Transfer (3 Issues)

[1] Issue: One commenter urged the DEA to retain the existing regulations in part 1307. This commenter stated that part 1307 adequately addresses registrant return, recall, and transfer. The commenter stated that part 1307 functions properly; thus, there is no need to change it, and the commenter expressed concern that the new regulations will disrupt existing business practices. The commenter was particularly concerned that most controlled substances returned to distributors are re-salable and "not intended for disposal." Other commenters indicated confusion with regard to registrants seeking assistance from a SAC when disposing of controlled substances.

Response: The DEA first notes that the terms "disposal" and "destruction" are not interchangeable in the context of the rule. As described in the NPRM at footnote 4 and in this final rule at footnote 4, the terms "disposal," "dispose," and "disposition" appear several times in the CSA but are not defined. In the NPRM and this final rule, the DEA uses the terms "disposal" and "dispose" to refer generally to the wide range of activities that result in controlled substances being unavailable for further use or one entity ridding themselves of such substances (e.g., returns). Within the CSA, a controlled substance can be "disposed of" by destruction, return, recall, sale, or through the manufacturing process. As such, the modified regulations regarding registrant disposal codify existing practice, expand available options, and implement consistent procedures among registrants in accordance with their authorized business activities. This required deleting the existing regulations at § 1307.21 which authorized the SACs to individually authorize disposal. The new rule eliminates the authority of the SACs to individually authorize disposal methods for non-practitioners, and retains this option for practitioners. 21 CFR 1317.05. Otherwise, the new regulations maintain existing disposal practices for registrant inventory and authorize: Prompt on-site destruction; prompt delivery of controlled substances to a reverse distributor; and prompt delivery (for the purposes of return and recall) to the person from whom the controlled substance was obtained, the manufacturer, or a registrant authorized to accept returns on the manufacturer's behalf. Additionally, non-practitioners may promptly transport the controlled substances to a reverse distributor, a destruction location, or the location of any person authorized to receive the controlled substances for the purpose of return or recall. 21 CFR 1317.05. The DEA appreciates that by eliminating the option for a SAC to authorize specific disposal procedures on a case-by-case basis for non-practitioners, some reverse distributors may need to alter their disposal practices. Although this change may impact current business practices, as discussed in the NPRM, nationwide consistency is necessary in the disposal pharmaceutical controlled substances.

[2] Issue: One commenter asked the DEA to clarify what method of return is permitted other than via a freight forwarding facility pursuant to § 1317.10.

Response: With regard to the use of freight forwarding facilities pursuant to 21 CFR 1317.10(c), use of the word "may" indicates that the use of freight forwarding facilities is permitted but not required. Other authorized methods of transferring pharmaceutical controlled substances for the purpose of return or recall are outlined in § 1317.05(a)(3) and (4) for practitioners, and in 21 CFR 1317.05(b)(3) and (4) for non-practitioners.

[3] Issue: One commenter stated that it will be difficult for reverse distributors to adjust current business operations to meet the 14-day destruction requirement for recalled controlled substances, because product returns may be received from thousands of customers across the country. Additionally, this requirement may not be consistent with other agencies' regulations and policies governing manufacturers' voluntary recalls and other product recalls.

Response: As explained further below, the 14-day destruction requirement (which this final rule extends to 30 days) does not apply to recalled pharmaceutical controlled substances. 21 CFR 1317.15.

N. Destruction (19 Issues)

Non-Retrievable Destruction Standard

[1] Issue: Forty commenters asked the DEA to outline performance standards and parameters for the "non-retrievable" destruction standard. Although many commenters applauded the DEA for proposing a standard that will permit future innovation, many commenters felt that innovation may be hindered by the uncertain terms. Commenters asked the DEA to list currently-approved methods, and to outline how the DEA will evaluate new technology intended to render controlled substances "non-retrievable."

Response: In the NPRM, the DEA indicated that incineration and chemical digestion are some examples of current technology that may be utilized to achieve the non-retrievable

standard. The preamble of the NPRM states that sewering (disposal by flushing down a toilet or sink) and landfill disposal (mixing controlled substances with undesirable items such as kitty litter or coffee grounds and depositing in a garbage collection) are examples of current methods of disposal that do not meet the non-retrievable standard. The term non-retrievable is defined in the rule and is results-oriented because the DEA's concern is that the substance be permanently rendered to an unusable state. The performance standard is that the method renders the substance so that it cannot be transformed to a physical or chemical condition or state as a controlled substance or controlled substance analogue. 21 CFR part 1300. The DEA will not be routinely engaged in evaluating new technologies intended to render controlled substances "non-retrievable." Much like the DEA does not evaluate, review, or approve the specific processes or methods utilized to produce, synthesize or propagate a controlled substance, the DEA will not evaluate, review, or approve the processes or methods utilized to render a controlled substance non-retrievable, as long as the desired result is achieved.

[2] **Issue:** Twenty commenters asked the DEA to include the language regarding sewering and landfill disposal in the text of the regulation. These commenters applauded the DEA for stating that sewering and landfill disposal do not meet the "non-retrievable" standard; however, these commenters asked the DEA to include this same language in the text of the regulation.

Response: The DEA has determined that the most effective way of ensuring that the non-retrievable standard of destruction remains current with continuously changing technology is to provide a required end result rather than specify what means achieve or fail to achieve that result. A substance is rendered non-retrievable when its physical or chemical state is permanently and irreversibly altered and it may be unique to a substance's chemical or physical properties; the same means of destruction may not render every controlled substance non-retrievable. 21 CFR part 1300. Thus, the DEA declines to amend the text of the regulation to include such a broad prohibition. In consideration of the Disposal Act's goal to decrease the amount of pharmaceutical controlled substances introduced into the environment, the DEA emphasizes that sewering and landfill alone do not meet the non-retrievable standard. Once a controlled substance is rendered non-retrievable, it is no longer subject to the requirements of the DEA regulations.

[3] **Issue:** Several commenters requested that the DEA review and approve new destruction methods prior to allowing their use.

Response: As discussed in the immediately preceding responses, the DEA will not be engaged in reviewing or approving new destruction methods prior to allowing their use.

[4] **Issue:** One commenter suggested that the DEA provide a transition period to allow for additional research into the means by which a non-retrievable state may be achieved. This commenter proposed a timeframe, such as five years, to allow appropriate technology to develop. This commenter also suggested that the DEA permit sewering and landfill disposal in the interim.

Response: The DEA believes that technology by which pharmaceutical controlled substances may be rendered non-retrievable currently exists, thus providing existing opportunities for compliance with this rule and negating the need for a transition period beyond the effective date of this rule.

[5] **Issue:** Several commenters suggested that the DEA collaborate with the United States Environmental Protection Agency (EPA) to develop best practices for achieving a non-retrievable state using environmentally responsible methods.

Response: The DEA appreciates the environmental concerns surrounding the destruction of pharmaceutical controlled substances. The DEA has worked with, and is continuing to work with, the EPA regarding secure and responsible drug disposal, particularly for pharmaceutical controlled substances that may also be considered hazardous wastes. Additionally, the DEA has clearly stated in the rule that all methods of destruction must comply with all applicable Federal, State, tribal, and local laws and regulations, including EPA regulations.

[6] **Issue:** A commenter asked the DEA to clarify whether or not the non-retrievable standard of destruction applies to substances disposed from households, and this commenter stated that the DEA should develop and endorse a practical solution for in-home disposal.

Response: Ultimate users may continue to dispose of their own pharmaceutical controlled substances in the manner recommended by other Federal and State agencies, such as the FDA, Office of National Drug Control Policy (ONDCP), and EPA. The non-retrievable standard is only applicable to inventoried controlled substances (i.e., a registrant's stock) and collected controlled substances (i.e., substances collected from ultimate users by authorized collectors) to be disposed of by registrants, pursuant to § 1317.90. The non-retrievable standard does not apply to non-registrants.

[7] **Issue:** Several commenters asked the DEA to clarify whether or not controlled substances that were rendered "non-retrievable" will be regulated by the DEA.

Response: As provided in the definition, a controlled substance is considered non-retrievable when it cannot be transformed to a physical or chemical condition or state as a controlled substance or controlled substance analogue. 21 CFR part 1300. Once a substance is rendered non-retrievable, it is no longer subject to the requirements of the DEA regulations. The DEA believes that further regulations regarding substances that have been rendered non-retrievable are currently unnecessary because a non-retrievable substance cannot be abused and diversion to illicit use is futile.

Incineration and Chemical Digestion Destruction Methods

[8] **Issue:** Several commenters asked the DEA to specifically recommend incineration as the preferred method to achieve a non-retrievable state.

Response: The DEA believes that any actual or perceived endorsement or recommendation of a specific destruction method, beyond the provision of examples of current methods in the preamble, could suppress exploration and implementation of new technologies as people may assume that the endorsed or recommended methods are required at the exclusion of other methods. As such, the DEA is specifying a required result—non-retrievable—rather than a required method for achieving that result. 21 CFR 1317.90.

On-Site Destruction Methods

[9] **Issue:** Several commenters asked the DEA to clarify what "on-site destruction" means.

Response: As provided in § 1300.05(b) of the final rule, on-site destruction means that the controlled substances are destroyed on the physical premises of the destroying registrant's registered location. Collectors that are authorized to conduct mail-back programs must have and utilize an on-site method of destruction, pursuant to 21 CFR 1317.05(c)(1). The requirement for an on-site method of destruction does not apply to non-registrants.

[10] **Issue:** Commenters also expressed concern that distributors are unlikely to have an existing on-site

method of destruction because they are not typically licensed as waste handlers and suggested that the DEA provide alternatives to on-site destruction for hospitals and other medical facilities.

Response: This rule does not require any distributor or other registrant to utilize an on-site method of destruction except under certain circumstances in order to conduct a voluntary activity (e.g., receipt of mail-back packages as an authorized collector in accordance with § 1317.05(c)(1)).

[11] Issue: One commenter asked the DEA to consider the use of collection receptacles with deactivation technology.

Response: This rule does not prohibit on-site destruction of pharmaceutical controlled substances by authorized collectors with "deactivation" capability so long as such destruction is consistent with the standards set forth in the rule and the destruction results in a non-retrievable state. 21 CFR 1317.90.

Other Destruction-Related Concerns

[12] Issue: Approximately 20 commenters stated that the 14-day destruction requirement is impractical. These commenters suggested that the DEA allow more time since there are a limited number of commercial incinerators in the United States. Several commenters stated that reverse distributors must accumulate large amounts of controlled substances in order to obtain favorable pricing. Other commenters stated that the requirement will make it difficult for reverse distributors to properly process and record all transactions, and it will impose substantial financial and operational restrictions on reverse distributors as most reverse distributors do not have on-site destruction and may need to travel long distances to reach an appropriate destruction facility.

Response: The DEA has carefully and thoroughly considered these concerns, and the final rule in § 1317.15(d) extends the destruction requirement timeframe from 14 calendar days to 30 calendar days and eliminates the "as soon as practicable" standard with respect to this destruction requirement. The DEA remains concerned about increased diversion risks due to pharmaceutical controlled substances remaining at a single location for extended periods of time. As discussed in detail in the NPRM, prescription drug abuse is an American epidemic, and it is America's fastest growing drug problem. When large volumes of pharmaceutical controlled substances accumulate, they become an attractive target for drug seekers and drug abusers. Accordingly, regardless of the applicable timeframe to destroy controlled substances, reverse distributors are reminded that they must be vigilant and adhere to the requirements in the CSA and the implementing regulations. Finally, these registrants are reminded of their responsibility to provide effective controls and procedures to guard against theft and diversion, and their responsibility to notify the DEA of any theft or significant loss of any controlled substances within one business day of discovery. 21 CFR part 1301. The DEA continuously monitors compliance with the CSA and applicable regulations to ensure that controlled substances are not diverted to illicit purposes. If necessary, the DEA may consider revising the requirements applicable to reverse distributors' destruction activities, or imposing additional security requirements.

[13] Issue: Several commenters asked the DEA to clarify the day the clock starts for the 14-day destruction requirement.

Response: As discussed above, the final rule extends the timeframe from 14 days to 30 days. Day 1 is the day the substances are physically acquired through pick-up or delivery. 21 CFR 1317.15.

[14] Issue: One commenter asked the DEA to clarify whether or not the 14-day destruction requirement applies to law enforcement.

Response: This destruction requirement does not apply to law enforcement. Law enforcement guidelines are outlined in § 1317.35.

[15] Issue: One commenter suggested that the DEA apply the 14-day destruction requirement to all authorized collectors that destroy or cause the destruction of controlled substances, not just reverse distributors.

Response: As previously discussed, the final rule extends the destruction requirement timeframe from 14 days to 30 days. 21 CFR 1317.15. This requirement applies to reverse distributors destroying any controlled substance, as well as distributors when destroying sealed inner liners acquired from authorized collectors for destruction. Pursuant to § 1317.05(c), authorized collectors that maintain mail-back programs or collection receptacles must promptly destroy mail-back packages and inner liners, without adhering to a certain number of days in order to provide them some flexibility depending upon their particular circumstances.

[16] Issue: Two commenters stated that all management and disposal of controlled substances should be restricted to DEA-registered hazardous waste disposal companies.

Response: The DEA believes that restricting the management and disposal of controlled substances as suggested would severely burden registrants without adding benefit. Pursuant to this rule, a destruction facility is not required to register with the DEA simply because a registrant utilizes that facility to destroy pharmaceutical controlled substances in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations. The DEA does not find it necessary to register these entities because the destroying registrant maintains possession and control of the substances (and therefore retains responsibility and accountability) until the substances are rendered non-retrievable. This is because all handling, monitoring, security, recordkeeping, and witnessing with regard to the pharmaceutical controlled substances is performed or supervised by registrants.

[17] Issue: One commenter indicated that the DEA should provide for broader Federal approval for methods of destruction rather than allowing for regionally-based guidance through the relevant SAC.

Response: As discussed, this rule expands the options available to registrants for proper disposal, but does not require any particular method of destruction, so long as the substances are rendered non-retrievable. This rule does not authorize SACs to specifically authorize any particular method of destruction, but it does allow a practitioner to seek guidance from the relevant SAC regarding the disposal of controlled substances. 21 CFR 1317.05.

[18] Issue: Several commenters asked for clarification regarding the means by which an authorized collector may promptly destroy collected substances, and whether chemical treatment of controlled substances until such time as controlled substances can be retrieved for destruction would be considered prompt destruction.

Response: As discussed, the DEA is not requiring any particular method or means of destruction. All controlled substances destined for destruction must be rendered non-retrievable in order to be destroyed in a manner consistent with this rule. 21 CFR 1317.90. If chemical treatment renders a substance non-retrievable, it has been properly destroyed and is no longer subject to the DEA's regulations.

[19] Issue: One commenter suggested that the DEA require controlled substances to be partially destroyed prior to disposal in collection

receptacles, such as by grinding them up and mixing them with kitty litter.

Response: With regard to mixing pharmaceutical controlled substances with other substances prior to depositing them in a collection receptacle, this rule neither prohibits nor requires such activity. Some authorized collectors may find it desirable to direct ultimate users to mix pharmaceutical controlled substances with non-hazardous items, such as kitty litter, prior to depositing in receptacles; however, the DEA declines to mandate such a requirement for all authorized collectors. The security controls required by this rule are the minimum required to ensure the safe and secure disposal of pharmaceutical controlled substances.

O. Economic Concerns (18 Issues)

Continuation of Existing Programs

[1] Issue: Eighteen commenters with experience operating a disposal program stated that following the new regulations will be prohibitively costly, and their current program will be forced to stop collection activities. These commenters stated that they sort controlled substances from non-controlled substances and packaging. According to these commenters, controlled substances represent a small fraction of their total volume of collected substances, and the sorting prohibition will substantially increase costs.

Response: As explained above, comingling of controlled and non-controlled substances is permitted by the rule in § 1317.75, but it is not required, and this rule does not require pharmaceutical controlled substances collected from ultimate users to be collected and stored in the original packaging. Authorized collectors may choose to address adequacy of space issues by choosing not to collect comingled controlled substances and non-controlled substances and by excluding packaging materials from being deposited into the collection receptacle. Also, law enforcement continues to have autonomy regarding their collection activities, and this rule does not prohibit law enforcement from handling collected substances. Prior to the effective date of this rule, it is unlawful for ultimate users to transfer controlled substances to any entity (excluding law enforcement), except in the limited circumstances allowed under 21 CFR 1307.21(a)(2).

[2] Issue: Several commenters stated that they would have to hire additional help for their program to continue, and that they would no longer be able to rely on volunteers or other personnel that did not meet the NPRM's "authorized employee" definition.

Response: As discussed, in § 1300.05(b) the final rule modifies the proposed definition of "authorized employee" to omit the word "authorized." In this final rule, the DEA is adopting the general common law of agency's definition of the term "employee." Any person who meets certain criteria may have access to or influence over collected substances on behalf of an authorized collector. Also, under this rule, volunteers may assist with disposal programs or take-back events as long as they do not have access to or influence over the collected controlled substances.

Two Employee Requirement

[3] Issue: Approximately 30 commenters felt that it would be infeasible for two employees to oversee disposal procedures due to limited personnel. Commenters suggested allowing an "authorized employee" of another registrant, such as a reverse distributor, to satisfy the second "authorized employee" requirement. One commenter stated that the DEA should clarify that under proposed § 1317.75(g), installation and removal of inner liners may be performed by a law enforcement officer instead of two employees.

Response: The DEA believes that the two-employee integrity requirement is a necessary security measure to effectively guard against diversion and to ensure that the controlled substances are handled, transferred, and recorded in a manner that is consistent with all applicable laws and regulations. The DEA carefully considered the various concerns and took steps to alleviate some of these concerns. First, as just discussed, the final rule modifies the proposed definition of "authorized employee" to instead adopt the common law of agency's definition of the term "employee," thus including employees that were excluded by the definition proposed in the NPRM (*e.g.*, part-time employees and off-duty law enforcement officers). 21 CFR part 1300. Second, as previously discussed, the final rule relaxes the two employee requirement for collection receptacles located at LTCFs in § 1317.80(c). The DEA is making this exception because of the unique circumstances faced by LTCFs, as recognized by the Disposal Act, and in keeping with the DEA's historically accommodating regulations with respect to LTCFs (e.g., §§ 1306.11(f) and 1306.13(b) regarding faxing schedule II prescriptions and dispensing partial prescriptions). The DEA believes that the above changes will alleviate some of the concerns expressed by the commenters while maintaining the necessary security to reduce diversion risks.

[4] Issue: Twenty-seven commenters stated that the requirement to have two employees from the pharmacy present to remove and install a collection receptacle's inner liner is excessive and too costly. Several commenters noted that this requirement alone will dissuade retail pharmacies from managing collection receptacles. Several commenters stated that small pharmacies may not have two employees working during the same shift, or even have two people employed full-time by the pharmacy. Two commenters suggested requiring a dual-lock system on collection receptacles, where the collector registrant retains one key and a reverse distributor retains the other.

Response: The DEA carefully considered the commenters' concerns, and amended the text of the rule to address this issue. In the context of this issue, the two-employee requirement only applies to installation and removal of the inner liners which does not need to be accomplished by two employees on the same shift. Also, dual-locks on collection receptacles at retail pharmacies are not a reasonable alternative because collectors are authorized only at *their own* registered location or controlled premise. If a retail pharmacy employee retained one key in a dual-lock system, and a reverse distributor retained the other key, then the reverse distributor would be handling collected substances at the retail pharmacy's registered location or controlled premise, an activity that is not permitted. Reasonable alternatives include installing and removing an inner liner during a shift change, or other times when there is more than one employee present. The final rule also modifies the proposed definition of "authorized employee," by adopting the common law of agency's definition of "employee" and correspondingly eliminating the requirement that employees authorized to conduct disposal activities be employed full-time by the authorized collector. 21 CFR part 1300. The DEA believes that the two-employee integrity requirement is a necessary security measure to effectively guard against diversion and to ensure that the controlled substances are handled, transferred, and recorded in a manner that is consistent with all applicable laws and regulations.

[5] Issue: Several commenters stated that the requirement that two employees from a retail pharmacy be present to

install and remove inner liners at LTCFs is prohibitively burdensome. Several commenters stated that most retail pharmacies do not have a vehicle for this purpose, and it is a liability to have pharmacy employees traveling to LTCFs to change inner liners. Two commenters suggested that the requirement should be one employee from the pharmacy and one employee from the LTCF.

Response: The DEA carefully considered alternatives that will provide convenient options for the unique population of LTCF residents, but will also provide safe and secure disposal. As amended, the final rule in § 1317.80(c) provides that inner liner installations, storage, removals, and transfers at LTCFs may be performed either by two employees of the authorized collector, or by one employee of the authorized collector and a supervisor-level employee of the LTCF designated by the authorized collector. The DEA believes that this modification is important to encourage hospitals/clinics and retail pharmacies to maintain collection receptacles for LTCF residents, by easing the burdens on authorized collectors who maintain collection receptacles at LTCFs—the only collectors who maintain collection receptacles at locations away from their primary registered locations. Additionally, the DEA recognizes that some authorized collectors do not have a vehicle specifically for the purpose of travelling to LTCFs, or currently allow employees to travel. The DEA notes that no particular vehicle is required to transport employees of the authorized collector to the LTCF, and, as discussed above, the DEA encourages authorized collectors managing a collection receptacle at a LTCF to coordinate removal of inner liners with the delivery of controlled substances dispensed to LTCF residents.

[6] Issue: Fifteen commenters stated that it will be economically burdensome to have two employees of the reverse distributor accompany the collected substances to the point of destruction to witness the destruction. These commenters noted that waste management companies often travel hundreds of miles to reach a destruction facility. The commenters stated that it is unreasonable to have two employees of the reverse distributor accompany the collected substances and witness the destruction, and some commenters suggested that the DEA permit other security mechanisms, such as GPS devices and security cameras, to serve in lieu of the second employee.

Response: The DEA believes that the two-employee integrity requirement is a necessary security measure to effectively guard against diversion and to ensure that the collected substances are handled, transferred, and recorded in a manner that is consistent with all applicable laws and regulations. 21 CFR 1317.95. The DEA notes that the DEA registrants who expressed concern regarding this requirement already adhere to it in their current business practices. However, the DEA has thoroughly and carefully considered the commenters' concerns and considered the following alternatives to the two-person integrity requirement: (1) Requiring destruction facilities to register with the DEA; (2) requiring the transferring registrant (*e.g.*, retail pharmacies, hospitals/clinics, etc.) to accompany the controlled substances to the point of destruction; (3) requiring on-site destruction; (4) requiring additional recordkeeping and witnessing at the point of destruction by the non-registrant destruction facility; and (5) requiring GPS devices or security cameras to serve in lieu of the second employee. The DEA did not elect these alternatives because the DEA is without sufficient authority to impose them, or the alternatives were impractical, excessive, did not provide adequate security, would result in voluminous, difficult to maintain and verify records, and/or would reduce the disposal options available to ultimate users.

The two-person integrity requirement is of paramount importance when transporting controlled substances to the point of destruction because these persons are uniquely entrusted with ensuring the substances are destroyed and not diverted to illicit purposes. Registrants that destroy on-site also face diversion risks and security concerns and must adhere to the two-person integrity requirement when destroying controlled substances. These diversion risks and security concerns increase substantially in the case of reverse distributors because they routinely acquire from other registrants large volumes of controlled substances destined for destruction, and they routinely transport those substances to a remote, un-registered location for destruction, yet there is no independent mechanism to ensure or verify that the substances within their possession are actually destroyed and not diverted.

Furthermore, as explained previously, in every other transfer of controlled substances in the closed system of distribution, there are two registrants on each side of the transfer to ensure accountability and identify and prevent diversion. When controlled substances are transferred for destruction, there may not be a registrant verifying the destruction of the controlled substances. Adherence to the two-employee integrity requirement will provide accountability for the controlled substances during the destruction process, preventing possible loss, possible theft, and diversion of the controlled substances.

Similarly, the DEA declines to allow GPS devices or security cameras to serve in lieu of a second employee. These types of security measures can be compromised, and do not provide the same level of deterrence or risk mitigation as the presence of a second person because they are strictly after-the-fact methods of diversion control as opposed to providing security throughout the transportation and destruction process. GPS devices cannot provide information as to whether or not controlled substances were removed from the transporting vehicle, and cameras cannot observe transportation and destruction from all angles. For example, a single driver being monitored by GPS and video could drive to the destruction facility on the approved route, remove the controlled substances from the vehicle, move with the controlled substances out of the view of the camera, and place the controlled substances into a separate vehicle or hidden spot off camera rather than destroying them. In such a scenario, neither the GPS, nor the camera would indicate any sort of diversion, whereas a second person would be present throughout transportation and destruction to serve as a deterrent and ensure that the controlled substances were actually destroyed.

For these reasons, the DEA believes that the two-person integrity requirement is the most reasonable, secure, and economic substitute for another registrant serving as an independent verification method at the end of the closed system of distribution.

Implementation Costs

[7] Issue: One commenter indicated that the enhanced security procedures proposed for the disposal process will be overly burdensome and costly. This commenter recommended that the DEA meet with industry stakeholders to identify options that will allow innovation while maintaining security.

Response: The security requirements in this rule are the minimum needed to protect the public health and safety, to ensure accountability, and to reduce the risk of diversion during the disposal process. In addition, there were multiple opportunities for industry stakeholders (and any other interested persons) to participate in the

rulemaking process for this rule through participation in the public meeting held in January 2011, and the submission of written comments during the open comment period. The DEA carefully considered discussion from the meeting, as well as the written comments submitted in response to the NPRM.

[8] Issue: Eleven commenters stated that the regulations proposed in the NPRM are too costly, and the costs will discourage potential collectors from participating. Several commenters expressed concern about the costs associated with retail pharmacies managing collection receptacles, particularly at LTCFs.

Response: As provided in the Disposal Act and discussed in the NPRM, the DEA cannot require any entity to establish or maintain a disposal program. Based on information received from the public and industry during the public meeting in 2011, as well as information received in response to the NPRM, the DEA believes that many entities are eager to voluntarily establish disposal programs. Entities may choose to establish disposal programs for various reasons, including for profit, to build goodwill in the community, to attract customers, to advertise businesses, and to preserve the environment.

[9] Issue: Several commenters provided feedback regarding costs related to voluntary implementation and maintenance of disposal programs, although none provided any actual data that could be applied to the cost analysis except for a suggestion that the DEA review information from a report on waste collection, and one commenter that provided an estimate without any supporting data. Generally, commenters indicated that the proposed methods of collection would have associated costs incurred through recordkeeping, purchase of inner liners, changes in procedures, increases in destruction costs, and development of mail-back packages and collection receptacles. Commenters encouraged the DEA to further explore the potential costs of the proposed options as well as additional alternatives.

Response: The DEA appreciates the commenters' concerns regarding potential costs associated with the implementation and maintenance of disposal programs. The DEA has updated its economic analysis to address, directly, the costs of this rule with respect to those registrants that do choose to establish a collection program. Such implementation, however, is strictly voluntary; thus, any entity that does not wish to incur the related costs may choose not to participate. Additionally, as described in the NPRM, the DEA anticipates that a variety of interest groups, corporations, community groups, and other entities will work together to provide secure and responsible disposal options pursuant to this rule.

[10] Issue: One commenter suggested that the DEA provide an exception for analytical labs from the requirements of proposed § 1317.95(c) (§ 1317.95(d) in the final rule), which requires that two employees handle the destruction of controlled substances, in instances where the testing renders a substance non-retrievable.

Response: The DEA declines to provide a blanket exception for analytical laboratories for the described situation. The DEA believes that such instances as described by the commenter will be incidental to testing. If the testing is specifically designed to develop new methods of destruction or destruction is otherwise not incidental to testing, all destruction must be in accordance with the provisions in subpart C of this rule.

[11] Issue: One commenter expressed concern that this rule will impose obligations on authorized collectors that are inconsistent with obligations imposed by other agencies, particularly the FDA, EPA, and DOT. The commenter stated that the potential liability stemming from such conflicts will discourage participation.

Response: The DEA has worked directly with other Federal agencies regarding the implementation of this rule, including the EPA and DOT. The DEA believes that authorized collectors may comply with this rule and other agency regulations. Authorized collectors should contact applicable agencies for further guidance if they believe that their specific circumstances may lead to conflicts.

Funding and Incentives

[12] Issue: One commenter asked the DEA to allow private/public partnerships for collection receptacles, mail-back programs, and take-back events.

Response: This rule does not dictate what funding sources are permitted or prohibited. Entity partnerships are not prohibited as long as the authorized collector follows all procedures outlined in this rule.

[13] Issue: Ten commenters expressed concern that there is no mandate, funding, or incentive for collectors to participate. Two commenters suggested that the DEA establish incentives to encourage participation, or require all pharmacies to install and maintain collection receptacles. Several commenters indicated that without a clear source of funding, cost mitigation, or participation incentive, it is unlikely that registrants will voluntarily accept the financial burdens associated with the provision of collection opportunities.

Response: The DEA appreciates the suggestions and concerns of the commenters regarding funding for voluntary controlled substances collection programs. The DEA points out that the Disposal Act did not authorize the DEA to assign responsibility of funding to any entity, and the Disposal Act specifically required the DEA to promulgate the implementing regulations in such a way that participation would not be mandatory. The DEA's intent in soliciting comments regarding this rule's potential economic impact was to gain knowledge regarding potential costs—not which entities should fund disposal programs. The DEA has attempted to provide regulations that minimize the financial burden while retaining a level of security to ensure public safety and reduce diversion risks. This rule does not address the responsibility of costs associated with any collection program. The DEA recognizes that collection programs will have associated costs and each entity that chooses to establish and maintain such a program must determine how to manage such costs.

Other Economic Concerns

[14] Issue: A number of commenters urged the DEA not to impose additional fees on registrants that choose to become authorized collectors. These commenters asked the DEA to clarify whether or not there will be any cost to modify a registration to become an authorized collector. One commenter suggested that the DEA offer a reduced fee for non-profit organizations to become registered as reverse distributors.

Response: Section 1301.51(c) states that no fee will be required to modify a registration to become authorized as a collector. Pursuant to 21 U.S.C. 886a, fees charged by the DEA under its diversion control program must be set at a level that ensures the recovery of the full costs of operating the various aspects of the program. The DEA last modified the registration fees on April 16, 2012. 77 FR 15234. If the DEA determines in the future that such fees should be modified in order to ensure the recovery of the full costs of the diversion control program, including those contained in this rule, the DEA will propose a modified fee schedule

pursuant to the notice-and-comment rulemaking process. The DEA currently provides limited exceptions and exemptions from registration fees to very specific groups and entities as identified in part 1301. At this time, the DEA does not anticipate expanding such exceptions and exemptions as a result of or in conjunction with the implementation of this rule.

[15] Issue: A few commenters noted that DEA's Economic Impact Analysis estimated the universe of potential respondents to include distributors, reverse distributors, manufacturers, and retail pharmacies, without considering hospitals, surgery centers, dental clinics, veterinary practices, or physicians' offices.

Response: The DEA's analysis included a universe of potential respondents comprised of only those entities that may be affected by the rule—those registrants that are eligible to become authorized collectors (i.e., distributors, reverse distributors, manufacturers, NTPs, and hospitals/clinics with an on-site pharmacy, and retail pharmacies).

[16] Issue: Two commenters stated that the DEA did not appropriately calculate the costs associated with the proposed rule. One commenter stated that the DEA should acknowledge the costs associated with recordkeeping requirements, purchasing inner liners, purchasing mail-back packages, procedural changes, and increased destruction costs.

Response: As discussed previously, the economic analysis of the final rule takes into account costs associated with voluntary performance of collection activities even though the provisions that facilitate non-registrant disposal are completely voluntary, not mandated. Any collector, reverse distributor, distributor, or law enforcement that chooses to engage in the voluntary activities described in this section, does so based on its own evaluation of costs and benefits (tangible and intangible).

[17] Issue: One commenter stated that the economic impact analysis is inadequate because it does not acknowledge that parts of this rule are an "indirect" mandate for LTCFs. This commenter referred to incidents where LTCFs will have no other options for controlled substance disposal if patients are unable to dispose of the medication and there is no other person authorized to dispose of the controlled substances.

Response: In response to this comment, the final rule modifies the language of § 1317.80(a), as proposed, which appeared to prohibit LTCFs from using any disposal method other than a collection receptacle. Under the final rule, LTCFs *may* dispose of controlled substances on behalf of an ultimate user who resides, or has resided, at such LTCF. 21 CFR 1317.30 and 1317.80. The DEA notes that the decision to implement and manage a collection program for ultimate user disposal is voluntary. It should be noted that LTCF residents are ultimate users themselves and they, members of their households, and persons lawfully entitled to dispose of a decedent's personal property, may avail themselves of all disposal methods made available by this rule. 21 CFR 1317.30.

[18] Issue: One commenter stated that the DEA did not consider veterinary practices, prisons, or clinics when calculating the economic impact analysis.

Response: In the proposed rule, the DEA considered veterinary practices, prisons, and clinics in the accompanying calculations concerning economic impact to the extent that these entities would be registered as practitioners or non-practitioners. For the final rule, the DEA calculated the economic impact on these entities to the extent that they could become collectors. Not all registrants are eligible to become authorized collectors. Of this specified list of entities inquired about by the commenter, only a small subsection, specifically hospitals/clinics with on-site pharmacies, may become authorized as collectors in accordance with this final rule. 21 CFR 1317.40 and 1317.70.

P. Recordkeeping and Reporting (8 Issues)

[1] Issue: One commenter asked the DEA to clarify whether or not the recordkeeping requirements in the rule apply to all registrants or only authorized collectors.

Response: The new recordkeeping requirements contained in this rule are applicable to all registrants, including authorized collectors. To clarify this important distinction, the DEA moved the recordkeeping provisions in proposed part 1317 to part 1304.

[2] Issue: Several commenters urged the DEA to remove the inventory and recordkeeping requirements for mail-back packages and inner liners. The commenters believe that such recordkeeping will be challenging and provide limited benefits. One commenter suggested that the DEA instead adopt tracking procedures currently used in some non-controlled substance collection programs.

Response: As described in the NPRM, inventory and recordkeeping requirements for collected substances are necessary for a number of reasons, including accountability of collected substances within the possession and control of authorized collectors. The inventory and recordkeeping requirements included in this rule are generally consistent with those otherwise required of registrants, thus minimizing burden. The DEA believes that these inventory and recordkeeping requirements are necessary to help minimize the risk of diversion and to identify diversion of controlled substances destined for destruction.

[3] Issue: One commenter suggested that the DEA eliminate ARCOS reporting requirements for reverse distributors regarding collected substances from ultimate users. Another commenter asked the DEA to clarify what information is required for ARCOS reporting.

Response: In this final rule, § 1304.33(g) (relocated from proposed § 1317.50) exempts reverse distributors and distributors that acquire controlled substances from collectors or law enforcement from reporting to ARCOS with respect to pharmaceutical controlled substances collected through mail-back programs and collection receptacles.

[4] Issue: One commenter asked the DEA to clarify what records reverse distributors must keep when receiving collected substances from law enforcement.

Response: The recordkeeping requirements in § 1304.22(e)(4) that apply to controlled substances acquired by registrants that reverse distribute from collectors also apply to those acquired from law enforcement. The final rule also adds a new paragraph in § 1304.11(e)(3)(iii) specifying the information relating to controlled substances acquired from collectors and law enforcement that a registrant that reverse distributes must maintain in its inventories. Under the revised § 1304.03(a), these provisions relating to reverse distributors apply to any entity that reverse distributes, as defined in § 1300.01(b), whether or not it is registered with the DEA as a reverse distributor. Finally, the requirement in § 1304.21(e) to maintain a DEA Form 41 applies to the destruction of a sealed inner liner or mail-back package by a registrant that reverse distributes.

[5] Issue: Commenters asked the DEA to clarify who is responsible for tracking the mail-back packages, and how mail-back packages that were disseminated but not returned to the authorized collector will be reconciled with the inventory.

Response: There is currently no requirement for the authorized collector to reconcile the inventory in order to

determine which packages were not returned. As discussed in the NPRM, the DEA does not believe that requiring authorized collectors to institute a tracking or notification system for ultimate users is necessary at this time, although such systems are not prohibited so long as the collector does not require the ultimate user to provide personally identifiable information, as specified in § 1317.70(d).

[6] Issue: Commenters asked the DEA to eliminate the following recordkeeping requirements for inner liners: Tracking unused inner liners on hand, recording the acquisition date, recording the installation date, and the requirement that two employees witness the removal and installation of inner liners.

Response: As previously discussed, the DEA believes that all of the inventory and recordkeeping requirements in part 1304 are the minimum necessary to ensure accountability and identify diversion.

[7] Issue: Two commenters asked the DEA if reporting to the FDA is sufficient to satisfy the DEA's reporting requirements for cases of controlled substance recalls.

Response: No. Regardless of any other Federal, State, tribal, or local agency requirements, each registrant must maintain records and make reports to the DEA in a manner consistent with the requirements of chapter II of title 21 of the CFR.

[8] Issue: One commenter asked the DEA to clarify the recordkeeping requirements of § 1317.50(b)(2)(iii)—specifically, the requirement to record the registration number of the collection location when the collection occurs at a LTCF, which typically does not have a registration number.

Response: The final rule moves the referenced requirements to new § 1304.22(f). The record should include the approved collection location address of the LTCF and the authorized collector's registration number.

Q. Hazardous Materials Transportation and Hazardous Waste Destruction (3 Issues)

[1] Issue: Approximately 20 commenters expressed concern that the requirements outlined in this rule for the transportation of collected substances conflict with current regulations under the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA). One concern involved the comingling of collected substances that the DOT considers "hazardous materials" with nonhazardous materials or hazardous materials of a different class. Other concerns included how inner liners from collection receptacles that contain hazardous materials should be labeled and packaged for transport, and other notice requirements for hazardous waste under the DOT's PHMSA.

Response: All drug disposal activities must be conducted in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations. Compliance with the destruction requirements outlined in subpart C of this rule does not exempt any entity from complying with other Federal, State, tribal, or local laws or regulations. It is not within DEA's expertise or authority to opine what pharmaceutical controlled substances could be hazardous materials subject to DOT regulations. However, the DEA consulted with the DOT during various stages of this rulemaking. The DEA has been informed that if collected substances include hazardous materials, the transportation of those materials is subject to all applicable DOT regulations, including the "Hazardous Materials Regulations" (HMR). The DEA encourages entities to consult *www.phmsa.dot.gov/hazmat* for information regarding the HMR. In particular, the DEA encourages entities to contact the DOT's PHMSA regarding its "Approvals and Permits Program." PHMSA issues approvals and special permits to entities that apply for authorization to use agency approved alternatives to the HMR. Interested entities may consult *www.phmsa.dot.gov/hazmat/regs/sp-a.* for more information. The DEA has worked with the DOT to facilitate this process in an effort to ensure maximum participation in the collection of controlled substances for secure and responsible disposal, and the DEA will continue to work with the DOT to facilitate registrant compliance with all applicable laws and regulations. For these purposes, it should be noted that sealed collection receptacle inner liners may be transported inside of a shipping container that is labeled and packaged for transport with the necessary notice requirements applicable to hazardous waste under the DOT's PHMSA.

[2] Issue: One commenter asked whether or not law enforcement must comply with the DOT's PHMSA requirements for transporting collected substances that may contain hazardous materials.

Response: It is not within the DEA's expertise or authority to opine on the applicability of DOT regulations. However, the DEA believes that the DOT's Hazardous Materials Regulations apply to entities that place hazardous materials in commercial transportation, and not government vehicles operated by government personnel solely for non-commercial purposes. However, State and local governments may have different regulations that do apply to government entities or law enforcement. The DEA encourages these entities to consult the DOT as well as their State and local governments for specific guidance on transporting collected substances that may contain hazardous materials.

[3] Issue: Commenters asked the DEA whether or not collected substances must be destroyed as hazardous waste under the EPA's Resource Conversation and Recovery Act (RCRA).

Response: It is not within the DEA's expertise or authority to opine what pharmaceutical controlled substances could be hazardous waste subject to EPA regulations. The DEA does not have the authority to regulate hazardous waste and thus cannot advise on whether or not collected substances must be destroyed as hazardous waste pursuant to RCRA. However, the DEA has worked with the EPA at various stages of this rulemaking, and the DEA continues to work with the EPA to ensure the secure and responsible disposal of controlled substances, including those that may be considered hazardous waste. The DEA believes that there is a small portion of pharmaceuticals that are regulated as hazardous waste, and an even smaller portion of pharmaceuticals that are regulated as both controlled substances and hazardous waste. However, pharmaceutical controlled substances that are collected directly from ultimate users via mail-back programs or collection receptacles may fall under RCRA's Household Hazardous Waste Exemption; if so, EPA RCRA regulations would not apply in those instances. The DEA acknowledges that some state and local regulations may be more stringent.

The DEA is working with the EPA to ensure that this final rule will enable LTCF residents to responsibly, securely, and safely dispose of controlled substances that may also be considered hazardous waste. Collected substances from LTCFs may pose a unique challenge since the EPA currently uses a bifurcated system to determine whether pharmaceutical waste from LTCFs must be treated as hazardous waste under the RCRA. If the waste is generated by the resident, it does not have to be treated as hazardous waste and is exempt under the Household Hazardous Waste Exemption. If the waste is generated by the LTCF, it must be treated as hazardous waste unless it is otherwise exempt. Hazardous waste generated by LTCFs may be exempt if

the LTCF is a "conditionally-exempt small quantity generator." To qualify under such exemption, the LTCF must generate less than or equal to 100 kilograms of non-acute hazardous waste, *and* less than or equal to one kilogram of acute hazardous waste on a monthly basis. The DEA believes that most LTCFs may qualify under this conditional exemption. Also, the DEA acknowledges that many pharmaceuticals that are recognized as acute hazardous waste (e.g., blood thinners) are non-controlled substances. The DEA hopes that authorized collectors and LTCFs will collaborate to minimize the impact that disposing of such pharmaceuticals may have on collection efforts by separating these non-controlled substances from controlled substances to be deposited into collection receptacles.

The EPA is aware of the concerns regarding collected substances at LTCFs, and according to the Fall 2013 Regulatory Agenda, the EPA is currently drafting regulations to address hazardous waste pharmaceuticals, including the small group of pharmaceutical controlled substances that the EPA classifies as hazardous waste under the RCRA, when discarded. According to the Regulatory Agenda, the EPA's proposal, "Management Standards for Hazardous Waste Pharmaceuticals," may propose to "revise the regulations to improve management and disposal of hazardous waste pharmaceuticals," and clarify regulation of reverse distribution. The abstract for the proposal may be viewed at *www.reginfo.gov.* Interested persons are encouraged to follow the progress of this pending regulatory action.

The DEA encourages authorized collectors and others to seek guidance directly from the EPA, and the DEA encourages such persons to consult *www.epa.gov* for more information. All drug disposal and destruction must be conducted in a manner consistent with this rule and all other applicable Federal, State, tribal, and local laws and regulations.

R. Transporting Collected Substances (3 Issues)

[1] Issue: One commenter indicated that transporting collected substances directly to the destruction location will be virtually impossible because drivers must stop for rest breaks.

Response: The DEA recognizes that transportation to destruction facilities may occur over long distances. The requirement to transport collected substances directly to the destruction facility means that the collected substances should be constantly moving towards their final destruction destination and unnecessary or unrelated stops, and stops of an extended duration should not occur. The final rule in §§ 1317.05(b)(4) and 1317.95(c)(1) is modified to specify this requirement, which is designed to reduce the opportunities for diversion.

[2] Issue: Several commenters were concerned that this rule will change their existing transport procedures that were already approved by their local SAC.

Response: In promulgating this rule, the DEA carefully considered the impact of these changes to existing procedures and is requiring the minimum procedures necessary to ensure safe and secure means of transporting controlled substances. The rule provides a nationwide standard, and allows non-practitioners the flexibility to determine the best method of transportation considering their own individual circumstances while also ensuring accountability and reducing theft and diversion risks. Any previous waivers, Memorandums of Understanding, or Memorandums of Agreement issued in accordance with § 1307.21 shall be superseded by this final rule once it becomes effective. However, practitioners may seek assistance from their local SAC pursuant to § 1317.05(a)(4).

[3] Issue: Other commenters sought guidance on whether or not the DEA will limit the quantity of controlled substances that may be transported, and whether or not there will be additional requirements for interstate transport of collected substances.

Response: This final rule does not impose any transportation quantity limits or any requirements specific to interstate transport of controlled substances.

S. Miscellaneous Comments (2 Issues)

[1] Issue: Approximately eight commenters asked the DEA to expand the rule to include procedures for controlled substances that have been "partially administered" or "partially dispensed." These commenters referred to institutional settings where transdermal patches are used, as these used patches may contain residual amounts of controlled substances.

Response: As previously discussed, destruction of the residual amounts of controlled substances administered by a practitioner to a patient that remain in the delivery apparatus (in this instance, the transdermal patch) must continue to be recorded in accordance with existing § 1304.22(c). In accordance with the revised § 1304.21, these destructions are not required to be recorded on DEA Form 41. All disposals of inventory must be accomplished in accordance with § 1317.05(a), and all other applicable recordkeeping and inventory requirements.

[2] Issue: One commenter indicated that §§ 1317.15 and 1317.95 may conflict in that § 1317.15 allows for storage by a reverse distributor while § 1317.95 does not.

Response: The DEA has reviewed the relevant portions of this rule and determined that §§ 1317.15 and 1317.95 do not conflict. Section 1317.15 encompasses the wider topic of reverse distributor activities, including the acquisition and storage of controlled substances from other registrants, whereas § 1317.95 deals exclusively with the actual destruction process and the procedures that are required for destruction once substances are in the possession and control of the reverse distributor (including securely stored substances).

IV. Regulatory Analyses

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. In developing this rule, the DEA considered numerous alternatives for each requirement and method of collection and evaluated the impact of this rule on small entities. The DEA has concluded that the rule will not have a significant economic impact on a substantial number of small entities. The DEA updated the economic impact analysis after considering comments made by the public in response to the NPRM. The updated economic impact analysis of the final rule may be viewed in the rulemaking docket at *www.regulations.gov.*

In developing this rule, the DEA considered several options for both registrant and non-registrant disposal and reverse distributor destruction requirements. The DEA analyzed alternative methodology approaches keeping in mind its obligations under the CSA. The DEA considered three options for non-registrant disposal: (1) "Single Collection," which would permit non-registrants to utilize only one method of collection to dispose of their lawfully possessed controlled substances; (2) "Open Collection," which would authorize any person to collect controlled substances from ultimate users for disposal, regardless of their status as a registrant; and (3)

"Multiple Collection," which would authorize non-registrants to utilize more than one method of collection to transfer controlled substances for the purpose of disposal to law enforcement and certain registrants. In addition, the DEA considered two options for registrant disposal: (1) "Retain Existing Regulations," which would make no changes to the existing registrant disposal regulations (§§ 1307.12 and 1307.21); and (2) "Establish Consistent National Standards," which would eliminate existing regulations on the disposal of controlled substances (§§ 1307.12 and 1307.21) and promulgate a new part that would comprehensively outline the process and procedure for the disposal of controlled substances by registrants and non-registrants.

Finally, the DEA considered four options for reverse distributors: (1) "On-site Requirement," which would require reverse distributors to have and utilize an on-site method of destruction; (2) "Prompt Requirement," which would require reverse distributors, like all other registrants, to promptly destroy controlled substances; (3) "No Requirement," which would retain the current destruction standard and would not put a deadline on when reverse distributors must destroy controlled substances acquired for destruction; and (4) "No Later Than 30 Calendar Day Requirement," which would require reverse distributors to destroy controlled substances received for the purpose of destruction no later than 30 calendar days from receipt. The DEA performed a qualitative analysis of each of these alternatives and selected the "Multiple Collection" option for non-registrant disposal, the "Establish Consistent National Standards" option for registrant disposal, and the "No Later than 30 Calendar Day Requirement" option for reverse distributors.

In accordance with the RFA, the DEA evaluated the impact of this rule on small entities. While all 1.5 million DEA registrants must comply with the rule as it relates to the disposal of pharmaceutical controlled substances, only a small subset of the registrants are associated with activities where the rule imposes new mandatory requirements or provides options for voluntary activities. Therefore, the DEA examined the impact of two mandatory provisions in the rule: The 30-day destruction requirement for reverse distributors and the two employee transportation requirement for manufacturers, distributors, and reverse distributors. Additionally, the DEA estimated the level of voluntary participation in collection activities in accordance with the rule and the resulting cost impact.

The mandatory provisions and voluntary participation activities are estimated to affect 53,533 entities (439 manufacturers, 585 distributors, 55 reverse distributors, 656 narcotic treatment programs (NTPs), 3,068 hospitals/clinics, 29,582 pharmacies, and 19,148 long term care facilities (LTCFs). Of the 53,533 affected entities, 50,714 (423 manufacturers, 555 distributors, 38 reverse distributors, 610 NTPs, 1,346 hospitals/clinics, 29,328 pharmacies, and 18,414 long term care facilities), or 94.7% are estimated to be small entities.

Both the 30-day destruction and the two employee transportation requirements associated with the mandatory portions of the rule will apply to the 55 reverse distributors that receive controlled substances from other registrants for disposal, of which 38 were estimated to be small entities. The potential increase in destruction, transport, travel, and labor cost associated with these two requirements was analyzed for each of the 38 small entities. Additionally, reverse distributors with on-site destruction facilities may receive authorization to voluntarily operate a mail-back program. The DEA estimates that the three small reverse distributors with on-site destruction facilities will each operate a mail-back program. The DEA does not estimate that any reverse distributors will operate collection receptacles at their registered locations because of the small numbers of employees that work at those locations. However, reverse distributors will be impacted by the destruction of controlled substances from collection receptacles that are transferred to them for destruction. The total estimated cost of the mandatory portions and voluntary participation aspects of the rule was compared to the estimated annual revenue for each of the small reverse distributors. The economic impact of the mandatory portion and voluntary participation aspects of this rule is estimated to be significant, greater than one percent of annual revenue, for two (5%) of 38 affected small businesses.

The two-person transportation requirement associated with the mandatory portions of the rule also affects 423 small manufacturers and 555 small distributors that transport to reverse distributors or to an unregistered, off-site location for destruction. The potential increase in labor cost associated with the two-person requirement was analyzed for manufacturers and distributors. Additionally, a small number of manufacturers and distributors are estimated to volunteer to operate collection receptacles at their registered locations primarily for use by their employees. However, the DEA believes that manufacturers and distributors will not operate collection receptacles at their registered locations unless they believe there will be a benefit to them for the service. The economic impact of the mandatory portion and voluntary participation aspects of this rule is estimated to be significant for none (0.0%) of the 423 small manufacturers and none (0.0%) of the 555 small distributors.

The rule also permits certain other registrant categories to voluntarily conduct collection activities. The DEA estimates some retail pharmacies, hospitals/clinics with on-site pharmacies, and NTPs will voluntarily participate as collectors by operating collection receptacles at their locations. Some retail pharmacies and hospitals/clinics with an on-site pharmacy are also estimated to operate collection receptacles at LTCFs. The level of participation and operating costs were estimated to determine the number of small entities with impact greater than 1% of revenue.

In summary, the DEA estimates that zero (0.0%) of the 423 small manufacturers, zero (0.0%) of the 555 small distributors, two (5.0%) of 38 small reverse distributors, 62 (10.2%) of the small NTPs, zero (0.0%) of the 1,349 small hospitals/clinics, 810 (2.8%) of the 29,328 small pharmacies, and zero (0.0%) of the 18,414 small long term care facilities may be significantly impacted by this rule (that is, where the annual cost is estimated to be greater than 1% of annual revenue). But DEA emphasizes that these estimates are entirely dependent on the level of voluntary participation by these entities. All of the provisions relating to collection activities by manufacturers, distributors, NTPs, hospitals/clinics, pharmacies, and LTCFs are completely voluntary and these entities would be free to choose whether or not to participate based on their own review of the cost to them and the anticipated benefits in providing collection receptacles.

In total, the DEA estimates that 874 (1.7%) of the 50,714 affected small entities may be significantly affected by this rule. The DEA's assessment of economic impact by size category indicates that the rule will not have a significant effect on a substantial number of these small business entities.

In accordance with the RFA (5 U.S.C. 605(b)), the Administrator hereby certifies that this rulemaking has been

drafted consistent with the RFA, that a regulatory analysis on the effects or impacts of this rulemaking on small entities has been done, and that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders 12866 and 13563

This rule was developed in accordance with the principles of Executive Orders 12866 and 13563. Based on the completed economic analysis, the DEA does not anticipate that this rulemaking will 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. An economic analysis of the final rule can be found in the rulemaking docket at *www.regulations.gov*. Public comment was received in public meetings held on January 19–20, 2011, and through a solicitation for comment in the NPRM to help inform and develop these rules. Although not an economically significant rule, this rule on the disposal of controlled substances has been reviewed by the Office of Management and Budget (OMB).

The DEA has determined that reverse distributors currently destroy controlled substances within the "No Later than 30 Calendar Day" requirement the majority of the time. However, it is recognized that there may be instances when reverse distributors do not currently meet this requirement. Additionally, many manufacturers, distributors, and reverse distributors currently employ two persons to transport controlled substances for destruction. However, it is recognized that there may be instances when manufacturers, distributors, and reverse distributors do not currently meet this requirement. For these instances, the DEA estimated the cost to accommodate the requirements and has determined the cost is not a significant economic impact.

Moreover, the DEA estimated a range of costs of voluntary participation for manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that may participate to collect ultimate user pharmaceutical controlled substances.

In summary, the DEA estimates that the annual total cost to the economy as a result of the rule is $2,719,319 for the mandatory provisions of this rule and the total annualized cost of the mandatory provisions and the voluntary participation aspects of the rule ranges from $44,896,787 to $73,222,427. The DEA estimates the highest cost in any given year occurs in the first year, ranging from $45,282,242 to $99,075,339. Accordingly, the DEA does not anticipate that this rulemaking will 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.

Since the aspects of the rule that facilitate non-registrant disposal are completely voluntary (not mandated), manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies may become collectors if they choose to engage in the voluntary activities based on its own evaluation of costs and benefits (tangible and intangible). For the purposes of this analysis, the DEA assumes that an entity will volunteer to perform the activities to facilitate non-registrant disposal only if there is a net zero or positive benefit to the entity. For example, a pharmacy may derive tangible benefits, such as additional revenue from increased retail traffic to the pharmacy. Collectors may also derive tangible benefits such as public safety and good will from their collection activities. Any collector that chooses to engage in these voluntary activities can decide to cease these activities at any time. Therefore, for the purposes of this analysis, the DEA estimates that the cost of the voluntary participation aspects of this rule are offset by the benefits of the voluntary participation aspects of this rule and have a net zero economic impact. The total cost of the mandatory provisions and voluntary participation aspects of the rule ($73,222,427 at the highest voluntary participation rate) is compared to the benefit of this rule. In evaluating the costs and benefits of the rule, the annual cost of the rule is compared with the anticipated reduction in the growth rate of costs associated with diversion of controlled substances into the illicit market. The cost-benefit analysis uses the costs associated with the nonmedical use of prescription opioids, $8.6 billion in 2001[7] and $53.4 billion in 2006.[8] These are conservative estimates of the rapidly growing total cost associated with diversion of controlled substances into the illicit market. Although there is a lack of evidence to quantify the cost savings or public health impacts of the rule, the DEA believes that this rule reduces the growth in the cost of the diversion of controlled substances into the illicit market by at least $44.9 to $73.2 million annually and, therefore, this rule will have positive net economic benefits, including benefits related to the health and safety of the citizens and residents of the United States.

[7] Clin. J. Pain (The Clinical Journal of Pain), Volume 22, Number 8, October 2006.

[8] Clin. J. Pain (The Clinical Journal of Pain), Volume 27, Number 3, March/April 2011.

Paperwork Reduction Act

Pursuant to § 3507(d) of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), the DEA has identified the following collections of information related to this rule and has submitted these collection requests to the OMB for review and approval. This rule implements the Disposal Act, in addition to reorganizing and consolidating existing regulations on disposal into a comprehensive regulatory framework for the destruction of controlled substances. In accordance with the CSA, which establishes a closed system of distribution for all controlled substances, registrants are required to make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827(a) and 958. These records must be in accordance with and contain such relevant information as may be required by regulations promulgated by the DEA. 21 U.S.C. 827(b)(1).

In this rule, the DEA revises existing, and adds a minimum amount of new, registrant recordkeeping requirements. These requirements are consistent with requirements already required by statute and regulation.

Title: Implementation of Registrant Recordkeeping Requirements Pursuant to the CSA, 21 U.S.C. 827

The records that registrants are required to maintain pursuant to law are a vital component of the DEA's enforcement and control responsibilities—such records alert the DEA to problems of diversion and ensure that the system of controlled substances distribution is open only to legitimate handlers of such substances.

The DEA is revising the information that reverse distributors are currently required to record for clarity and consistency, and adding a minimum amount of new requirements. For all controlled substance records, reverse distributors will be required to maintain their existing business records so that

the record of receipt is maintained with the corresponding record of return or destruction. By maintaining all relevant business records together, the DEA will be able to trace each substance received by a reverse distributor from its acquisition to its disposition, whether by destruction or return to the manufacturer.

The DEA estimates that there will be 60 respondents to this information collection and that their estimated frequency of response will vary because, in accordance with 21 U.S.C. 827 and 958, registrants make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. Under existing law, reverse distributors are required to maintain, for at least two years, inventory records and records of controlled substances received, delivered, destroyed, or returned to the manufacturer. The annual hour burden for recordkeeping for reverse distributors is estimated to increase by 34 hours due to the requirements in this final rule, and the annualized cost to respondents is estimated to be $719. The DEA is also modifying information that registrants are required to record in the return and recall process. The DEA is eliminating the previous rule on return and recall, § 1307.12, and implementing separate rules on the return and recall of controlled substances for registrants and non-registrants in part 1317. The return and recall recordkeeping requirements reflect these changes.

The DEA estimates that the universe of potential respondents to this information collection will be 1,511,389 respondents (all registrants may transfer controlled substances for return or recall). The DEA estimates that the frequency of response will vary, because, in accordance with 21 U.S.C. 827(a), registrants must make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. Because registrants are already required to maintain records in accordance with 21 U.S.C. 827(a)–(b), the DEA anticipates that the annual hour burden will not be increased by this rule.

The DEA is implementing new recordkeeping requirements for registrants that collect controlled substances from ultimate users and other non-registrants in accordance with the new authority provided in the Disposal Act. The implementation of the Disposal Act regulations will provide ultimate users, LTCFs, and other non-registrants safe and convenient options to transfer controlled substances for the purpose of disposal: Take-back events, mail-back programs, and collection receptacles. Registered manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies may obtain authorization from the DEA to be a collector pursuant to § 1317.40. A collector is a registered manufacturer, distributor, reverse distributor, narcotic treatment program, hospital/clinic with an on-site pharmacy, or retail pharmacy that is authorized under this rule to receive a pharmaceutical controlled substance from an ultimate user for the purpose of destruction, as defined in part 1300. The DEA is requiring information that collectors must record based on the particular ultimate user collection method implemented (i.e., mail-back program or collection receptacle).

The DEA estimates that the universe of potential participants to this information collection will be 87,736 respondents (Manufacturers—536, Distributors—829, Reverse Distributors—60, Narcotic Treatment Programs—1,332, Hospitals/Clinics—15,953, Retail Pharmacies—69,026).[9] However, the DEA estimates that the participants to this information collection will be 54,457 respondents (Manufacturers—107, Distributors—166, Reverse Distributors—10, Narcotic Treatment Programs—999, Hospitals/Clinics—2862, Retail Pharmacies—34,513, and an additional 15,800 hospitals/clinics and retail pharmacies operating collection receptacles at LTCFs). The DEA estimates that the frequency of response will vary, because, in accordance with 21 U.S.C. 827(a), registrants must make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. The DEA notes, however, that the option to become a collector is voluntary and no entity is required to establish or operate a disposal program as a collector. While the authorization to collect is a new activity, the DEA has estimated the level of participation. The estimated 54,457 respondents are estimated to have an annualized hour burden of 89,406 with an estimated annualized cost of $1,670,064. The DEA will continue to monitor and analyze the potential burden of the new requirements imposed by this rule.

The DEA is authorizing reverse distributors to acquire controlled substances from law enforcement and authorized collectors that have acquired controlled substances from ultimate users and other non-registrants. The DEA is also authorizing distributors to acquire controlled substances from authorized collectors that collect controlled substances from ultimate users. The DEA is requiring these reverse distributors and distributors to maintain complete and accurate records, in accordance with part 1304, of controlled substances received, delivered, or otherwise transferred for the purpose of destruction.

The DEA estimates that the universe of potential respondents to this information collection will be 889 respondents (Distributors—829, Reverse Distributors—60). The DEA estimates that the frequency of response will vary, because, in accordance with 21 U.S.C. 827(a), registrants must make an initial and biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. The authorization for reverse distributors to acquire controlled substances collected by law enforcement and collectors, and the authorization for distributors to acquire controlled substances from collectors, is new. Although the DEA has estimated the level of participation, the DEA is unable to estimate the number of information collection events because destruction of multiple acquisitions of controlled substances can be on a single form. The DEA's initial estimate for the annual hour burden is 472 hours (32 minutes per event), with an estimated annualized cost of $10,037. The DEA will continue to analyze the potential burden of the new requirements imposed by this rule.

Title: Registrant Record of Controlled Substances Destroyed—DEA Form 41

OMB Control Number: 1117–0007.
Form Number: DEA Form 41.

The records that registrants are required to maintain pursuant to law are a vital component of the DEA's enforcement and control responsibilities—such records alert the DEA to diversion and ensure that the system of controlled substances distribution is open only to legitimate handlers of such substances. The DEA is requiring registrants involved in the destruction of controlled substances to record certain information. The record

[9] The universe of potential participants includes all registrants that could potentially become collectors. It is likely that this estimate will be adjusted downward once the DEA obtains more information.

of destruction must include the signature of the two employees of the registrant that witnessed the destruction, in addition to other information about the controlled substance disposed of and the method of destruction utilized. The DEA is modifying existing DEA Form 41 to record the destruction of controlled substances that remain in the closed system of distribution and to account for registrant destruction of controlled substances collected from ultimate users and other non-registrants outside the closed system pursuant to the Disposal Act. DEA Form 41 has previously been approved by the OMB and assigned OMB control number 1117–0007. In accordance with the CSA, registrants that destroy controlled substances and utilize DEA Form 41 will be required to keep and make available the information in the specified format, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827(b).

The DEA estimates that there will be 87,736 respondents (Manufacturers—536, Distributors—829, Reverse Distributors—60, Narcotic Treatment Programs—1,332, Hospitals/Clinics—15,953, Retail Pharmacies—69,026) to this information collection. The number of respondents (87,736) represents the total number of registrants in business activities that are most likely to destroy controlled substances. The DEA estimates that the frequency of response will vary, because in accordance with 21 U.S.C. 827(a), registrants must maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of, and, as a result, will make a record of destruction each time they destroy a controlled substance. The DEA estimates that the average time per response will be 30 minutes and that the total annual burden will be 43,868 hours, with an estimated total annual cost burden of $928,247.

Executive Order 12988

This rule meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law, impose enforcement responsibilities on any State or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

National Environmental Policy Act (NEPA)

This rule provides options for the collection of controlled substances by registrants and non-registrants consistent with DEA regulations and Federal, State, tribal, and local laws and regulations. Provision of these options is intended to result in increased collection and destruction of unused controlled substances and thereby prevent diversion of such unused substances to illicit uses and result in collection and destruction of larger quantities in economical and environmentally sound manners. This rule establishes legal requirements for the handling of controlled substances. Destruction of controlled substances must be consistent with Federal, State, tribal and local laws and regulations.

The DEA and registrants have disposed of controlled substances since passage of the CSA. By regulation, the U.S. Department of Justice categorically excluded the DEA from further NEPA analysis with respect to regulations relating to the storage and destruction of controlled substances. This rule does not authorize any new methods of storage, transportation, or destruction of controlled substances, but is limited to the procedures and records pertaining to the collection of controlled substances for destruction. Accordingly, this proposed rule does not significantly affect the quality of the human environment. The DEA has, therefore, determined that this rule does not have significant individual or cumulative effects on the human environment and is excluded from detailed analysis pursuant to 28 CFR part 61, Appendix B.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*), on the basis of information contained in the "Regulatory Flexibility Act" section above, the DEA has determined and certifies pursuant to the UMRA that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. . . ." Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. The rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

Rule Text

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1305

Drug traffic control.

21 CFR Part 1307

Drug traffic control.

21 CFR Part 1317

Drug traffic control, Security measures.

For the reasons stated in the preamble, the DEA amends 21 CFR chapter II as follows:

PART 1300—DEFINITIONS

■ 1–2. The authority citation for part 1300 is revised to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

■ 3. In § 1300.01, amend paragraph (b) as follows:
■ a. Revise the introductory text;
■ b. Add a definition of "Collection" in alphabetical order;
■ c. Revise the last sentence in the definition of "Freight forwarding facility";
■ d. Add a definition of "Reverse distribute" in alphabetical order; and

■ e. Revise the definition of "Reverse distributor".

The revisions and additions read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

(b) As used in parts 1301 through 1308, 1312, and 1317 of this chapter, the following terms shall have the meanings specified:

* * * * *

Collection means to receive a controlled substance for the purpose of destruction from an ultimate user, a person lawfully entitled to dispose of an ultimate user decedent's property, or a long-term care facility on behalf of an ultimate user who resides or has resided at that facility. The term *collector* means a registered manufacturer, distributor, reverse distributor, narcotic treatment program, hospital/clinic with an on-site pharmacy, or retail pharmacy that is authorized under this chapter to so receive a controlled substance for the purpose of destruction.

* * * * *

Freight forwarding facility * * * For purposes of this definition, a distributing registrant is a person who is registered with the Administration as a manufacturer, distributor (excluding reverse distributor), and/or importer.

* * * * *

Reverse distribute means to acquire controlled substances from another registrant or law enforcement for the purpose of:

(1) Return to the registered manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; or

(2) Destruction.

Reverse distributor is a person registered with the Administration as a reverse distributor.

* * * * *

■ 4. Add § 1300.05 to read as follows:

§ 1300.05 Definitions relating to the disposal of controlled substances.

(a) Any term not defined in this part or elsewhere in this chapter shall have the definition set forth in section 102 of the Act (21 U.S.C. 802).

(b) As used in part 1317 of this chapter, the following terms shall have the meanings specified:

Employee means an employee as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: The hiring party's right to control the manner and means by which the product is accomplished; the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. Other applicable factors may be considered and no one factor is dispositive. The following criteria will determine whether a person is an *employee* of a registrant for the purpose of disposal: The person is directly paid by the registrant; subject to direct oversight by the registrant; required, as a condition of employment, to follow the registrant's procedures and guidelines pertaining to the handling of controlled substances; subject to receive a performance rating or performance evaluation on a regular/routine basis from the registrant; subject to disciplinary action by the registrant; and required to render services at the registrant's registered location.

Law enforcement officer means a person who is described in paragraph (1), (2) or (3) of this definition:

(1) Meets all of the following criteria:

(i) Employee of either a law enforcement agency, or law enforcement component of a Federal agency;

(ii) Is under the direction and control of a Federal, State, tribal, or local government;

(iii) Acting in the course of his/her official duty; and

(iv) Duly sworn and given the authority by a Federal, State, tribal, or local government to carry firearms, execute and serve warrants, make arrests without warrant, and make seizures of property;

(2) Is a Veterans Health Administration (VHA) police officer authorized by the Department of Veterans Affairs to participate in collection activities conducted by the VHA; or

(3) Is a Department of Defense (DOD) police officer authorized by the DOD to participate in collection activities conducted by the DOD.

Non-retrievable means, for the purpose of destruction, the condition or state to which a controlled substance shall be rendered following a process that permanently alters that controlled substance's physical or chemical condition or state through irreversible means and thereby renders the controlled substance unavailable and unusable for all practical purposes. The process to achieve a non-retrievable condition or state may be unique to a substance's chemical or physical properties. A controlled substance is considered "non-retrievable" when it cannot be transformed to a physical or chemical condition or state as a controlled substance or controlled substance analogue. The purpose of destruction is to render the controlled substance(s) to a non-retrievable state and thus prevent diversion of any such substance to illicit purposes.

On-site means located on or at the physical premises of the registrant's registered location. A controlled substance is destroyed *on-site* when destruction occurs on the physical premises of the destroying registrant's registered location. A hospital/clinic has an *on-site* pharmacy when it has a pharmacy located on the physical premises of the registrant's registered location.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 5. The authority citation for part 1301 is revised to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958, 965.

■ 6. In § 1301.13, revise paragraphs (e)(1)(i) and (ii) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I–V	New—225 Renewal—225a.	3,047	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered. Schedules II–V: May conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfr. was issued.
(ii) Distributing	Schedules I–V	New—225 Renewal—225a.	1,523	1	May acquire Schedules II–V controlled substances from collectors for the purposes of destruction.
*	*	*	*	*	*	*

* * * * *

■ 7. In § 1301.25, revise paragraph (i) to read as follows:

§ 1301.25 Registration regarding ocean vessels, aircraft, and other entities.

* * * * *

(i) Controlled substances acquired and possessed in accordance with this section shall be distributed only to persons under the general supervision of the medical officer employed by the owner or operator of the vessel, aircraft, or other entity, except in accordance with part 1317 of this chapter.

■ 8. Revise § 1301.51 to read as follows:

§ 1301.51 Modification in registration.

(a) Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address by submitting a written request to the Registration Unit, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. Additionally, such a request may be submitted on-line at *www.DEAdiversion.usdoj.gov.*

(1) The request shall contain:

(i) The registrant's name, address, and registration number as printed on the certificate of registration;

(ii) The substances and/or schedules to be added to the registration or the new name or address; and

(iii) A signature in accordance with § 1301.13(j).

(2) If the registrant is seeking to handle additional controlled substances listed in Schedule I for the purpose of research or instructional activities, the registrant shall attach three copies of a research protocol describing each research project involving the additional substances, or two copies of a statement describing the nature, extent, and duration of such instructional activities, as appropriate.

(b) Any manufacturer, distributor, reverse distributor, narcotic treatment program, hospital/clinic with an on-site pharmacy, or retail pharmacy registered pursuant to this part, may apply to modify its registration to become authorized as a collector by submitting a written request to the Registration Unit, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. Additionally, such request may be submitted on-line at *www.DEAdiversion.usdoj.gov.*

(1) The request shall contain:

(i) The registrant's name, address, and registration number as printed on the certificate of registration;

(ii) The method(s) of collection the registrant intends to conduct (collection receptacle and/or mail-back program); and

(iii) A signature in accordance with § 1301.13(j).

(2) If a hospital/clinic with an on-site pharmacy or retail pharmacy is applying for a modification in registration to authorize such registrant to be a collector to maintain a collection receptacle at a long-term care facility in accordance with § 1317.80 of this chapter, the request shall also include the name and physical location of each long-term care facility at which the hospital/clinic with an on-site pharmacy, or the retail pharmacy, intends to operate a collection receptacle.

(c) No fee shall be required for modification. The request for modification shall be handled in the same manner as an application for registration. If the modification of registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 223) to the registrant, who shall maintain it with the old certificate of registration until expiration.

■ 9. In § 1301.52, revise the last sentence of paragraph (c) and add paragraph (f) to read as follows:

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

* * * * *

(c) * * * Any controlled substances in his/her possession may be disposed of in accordance with part 1317 of this chapter.

* * * * *

(f) Any registrant that has been authorized as a collector and desires to discontinue its collection of controlled substances from ultimate users shall notify the Administration of its intent by submitting a written notification to the Registration Unit, Drug Enforcement Administration. See the Table of DEA Mailing Addresses in § 1321.01 of this chapter for the current mailing address. Additionally, such notice may be submitted on-line at *www.DEAdiversion.usdoj.gov.* When ceasing collection activities of an authorized mail-back program, the registrant shall provide the Administration with the name, registered address, and registration number of the collector that will receive the remaining mail-back packages in accordance with § 1317.70(e)(3) of this chapter.

■ 10. In § 1301.71, add paragraph (f) to read as follows:

§ 1301.71 Security requirements generally.

* * * * *

(f) A collector shall not employ, as an agent or employee who has access to or influence over controlled substances acquired by collection, any person who has been convicted of any felony offense relating to controlled substances or who, at any time, had an application for registration with DEA denied, had a DEA registration revoked or suspended,

or has surrendered a DEA registration for cause. For purposes of this subsection, "for cause" means in lieu of, or as a consequence of, any Federal or State administrative, civil, or criminal action resulting from an investigation of the individual's handling of controlled substances.

■ 11. In § 1301.72, revise paragraph (a) introductory text to read as follows:

§ 1301.72 Physical security controls for non-practitioners; narcotic treatment programs, and compounders for narcotic treatment programs; storage areas.

(a) *Schedules I and II.* Raw material, bulk materials awaiting further processing, finished products which are controlled substances listed in Schedule I or II (except GHB that is manufactured or distributed in accordance with an exemption under section 505(i) of the Federal Food Drug and Cosmetic Act which shall be subject to the requirements of paragraph (b) of this section), and sealed mail-back packages and inner liners acquired in accordance with part 1317 of this chapter, shall be stored in one of the following secured areas:

* * * * *

■ 12. In § 1301.74, add paragraph (m) to read as follows:

§ 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.

* * * * *

(m) A reverse distributor shall not employ, as an agent or employee who has access to or influence over controlled substances, any person who has been convicted of any felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or suspended, or has surrendered a DEA registration for cause. For purposes of this subsection, "for cause" means in lieu of, or as a consequence of, any Federal or State administrative, civil, or criminal action resulting from an investigation of the individual's handling of controlled substances.

■ 13. In § 1301.75, redesignate paragraphs (c) and (d) as paragraphs (d) and (e) and add a new paragraph (c) to read as follows:

§ 1301.75 Physical security controls for practitioners.

* * * * *

(c) Sealed mail-back packages and inner liners collected in accordance with part 1317 of this chapter shall only be stored at the registered location in a securely locked, substantially constructed cabinet or a securely locked room with controlled access, except as authorized by § 1317.80(d).

* * * * *

■ 14. In § 1301.76, revise paragraph (c) to read as follows:

§ 1301.76 Other security controls for practitioners.

* * * * *

(c) Whenever the registrant distributes a controlled substance (without being registered as a distributor as permitted in §§ 1301.13(e)(1), 1307.11, 1317.05, and/or 1317.10 of this chapter), he/she shall comply with the requirements imposed on non-practitioners in § 1301.74(a), (b), and (e).

* * * * *

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 15. The authority citation for part 1304 is revised to read as follows:

Authority: 21 U.S.C. 821, 827, 831, 871(b), 958(e)–(g), and 965, unless otherwise noted.

■ 16. Amend § 1304.03 by revising the first and second sentences of paragraph (a) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

(a) Every registrant, including collectors, shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section. Any registrant that is authorized to conduct other activities without being registered to conduct those activities, pursuant to §§ 1301.22(b), 1307.11, 1307.13, or part 1317 of this chapter, shall maintain the records and inventories and shall file the reports required by this part for persons registered or authorized to conduct such activities. * * *

* * * * *

■ 17. In § 1304.04, add paragraph (a)(3) to read as follows:

§ 1304.04 Maintenance of records and inventories.

(a) * * *

(3) A collector that is authorized to maintain a collection receptacle at a long-term care facility shall keep all records required by this part relating to those collection receptacles at the registered location, or other approved central location.

* * * * *

■ 18. In § 1304.11, revise paragraphs (e) introductory text and (e)(2) and (3) and add paragraphs (e)(6) and (7) to read as follows:

§ 1304.11 Inventory requirements.

* * * * *

(e) *Inventories of manufacturers, distributors, registrants that reverse distribute, importers, exporters, chemical analysts, dispensers, researchers, and collectors.* Each person registered or authorized (by §§ 1301.13, 1307.11, 1307.13, or part 1317 of this chapter) to manufacture, distribute, reverse distribute, dispense, import, export, conduct research or chemical analysis with controlled substances, or collect controlled substances from ultimate users, and required to keep records pursuant to § 1304.03 shall include in the inventory the information listed below.

* * * * *

(2) *Inventories of distributors.* Each person registered or authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1)(iii) and (iv) of this section.

(3) *Inventories of registrants that reverse distribute.* Each person registered or authorized to reverse distribute controlled substances shall include in the inventory, the following information:

(i) The name of the substance, and

(ii) The total quantity of the substance:

(A) For controlled substances in bulk form, to the nearest metric unit weight consistent with unit size;

(B) For each controlled substance in finished form: Each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter); the number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and the number of commercial containers of each such finished form (e.g., four 100-tablet bottles or six 3-milliliter vials); and

(C) For controlled substances in a commercial container, carton, crate, drum, or other receptacle that has been opened: If the substance is listed in Schedule I or II, make an exact count or measure of the contents; or if the substance is listed in Schedule III, IV, or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made; or

(iii) For controlled substances acquired from collectors and law enforcement: The number and size (e.g., five 10-gallon liners, etc.) of sealed inner liners on hand, or

(iv) For controlled substances acquired from law enforcement: the

number of sealed mail-back packages on hand.

* * * * *

(6) *Inventories of dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1)(iii) and (iv) of this section. In determining the number of units of each finished form of a controlled substance in a commercial container that has been opened, the dispenser or researcher shall do as follows:

(i) If the substance is listed in Schedules I or II, make an exact count or measure of the contents; or

(ii) If the substance is listed in Schedule III, IV, or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he/she must make an exact count of the contents.

(7) *Inventories of collectors.* Each registrant authorized to collect controlled substances from ultimate users shall include in the inventory the following information:

(i) For registrants authorized to collect through a mail-back program, the record shall include the following information about each unused mail-back package and each returned mail-back package on hand awaiting destruction:

(A) The date of the inventory;

(B) The number of mail-back packages; and

(C) The unique identification number of each package on hand, whether unused or awaiting destruction.

(ii) For registrants authorized to collect through a collection receptacle, the record shall include the following information about each unused inner liner on hand and each sealed inner liner on hand awaiting destruction:

(A) The date of the inventory;

(B) The number and size of inner liners (e.g., five 10-gallon liners, etc.);

(C) The unique identification number of each inner liner.

■ 19. In § 1304.21, revise paragraphs (a), (c), and (d) and add paragraph (e) to read as follows:

§ 1304.21 General requirements for continuing records.

(a) Every registrant required to keep records pursuant to § 1304.03 shall maintain, on a current basis, a complete and accurate record of each substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her, and each inner liner, sealed inner liner, and unused and returned mail-back package, except that no registrant shall be required to maintain a perpetual inventory.

* * * * *

(c) Separate records shall be maintained by a registrant for each independent activity and collection activity for which he/she is registered or authorized, except as provided in § 1304.22(d).

(d) In recording dates of receipt, importation, distribution, exportation, other transfers, or destruction, the date on which the controlled substances are actually received, imported, distributed, exported, otherwise transferred, or destroyed shall be used as the date of receipt, importation, distribution, exportation, transfer, or destruction (e.g., invoices, packing slips, or DEA Form 41).

(e) *Record of destruction.* In addition to any other recordkeeping requirements, any registered person that destroys a controlled substance pursuant to § 1317.95(d), or causes the destruction of a controlled substance pursuant to § 1317.95(c), shall maintain a record of destruction on a DEA Form 41. The records shall be complete and accurate, and include the name and signature of the two employees who witnessed the destruction. Except, destruction of a controlled substance dispensed by a practitioner for immediate administration at the practitioner's registered location, when the substance is not fully exhausted (e.g., some of the substance remains in a vial, tube, or syringe after administration but cannot or may not be further utilized), shall be properly recorded in accordance with § 1304.22(c), and such record need not be maintained on a DEA Form 41.

■ 20. In § 1304.22, revise the section heading, introductory text, and paragraph (e) and add paragraph (f) to read as follows:

§ 1304.22 Records for manufacturers, distributors, dispensers, researchers, importers, exporters, registrants that reverse distribute, and collectors.

Each person registered or authorized (by §§ 1301.13(e), 1307.11, 1307.13, or part 1317 of this chapter) to manufacture, distribute, dispense, import, export, reverse distribute, destroy, conduct research with controlled substances, or collect controlled substances from ultimate users, shall maintain records with the information listed in paragraphs (a) through (f) of this section.

* * * * *

(e) *Records for registrants that reverse distribute.* Each person registered or authorized to reverse distribute controlled substances shall maintain records with the following information for each controlled substance:

(1) For controlled substances acquired for the purpose of return or recall to the manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf pursuant to part 1317 of this chapter:

(i) The date of receipt; the name and quantity of each controlled substance received; the name, address, and registration number of the person from whom the substance was received; and the reason for return (e.g., recall or return); and

(ii) The date of return to the manufacturer or other registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; the name and quantity of each controlled substance returned; the name, address, and registration number of the person from whom the substance was received; the name, address, and registration number of the registrant to whom the substance was returned; and the method of return (e.g., common or contract carrier).

(2) For controlled substances acquired from registrant inventory for destruction pursuant to § 1317.05(a)(2), (b)(2), and (b)(4) of this chapter:

(i) The date of receipt; the name and quantity of each controlled substance received; and the name, address, and registration number of the person from whom the substance was received; and

(ii) The date, place, and method of destruction; the name and quantity of each controlled substance destroyed; the name, address, and registration number of the person from whom the substance was received; and the name and signatures of the two employees of the registrant that witnessed the destruction.

(3) The total quantity of each controlled substance shall be recorded in accordance with the following:

(i) For controlled substances in bulk form: To the nearest metric unit weight or volume consistent with unit size;

(ii) For controlled substances in finished form: Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter); the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and the number of commercial containers of each such finished form (e.g., four 100-tablet bottles or six 3-milliliter vials); and

(iii) For controlled substances in a commercial container, carton, crate, drum, or other receptacle that has been opened: If the substance is listed in

Schedule I or II make an exact count or measure of the contents; or if the substance is listed in Schedule III, IV, or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made.

(4) For each sealed inner liner acquired from collectors or law enforcement and each sealed mail-back package acquired from law enforcement pursuant to § 1317.55 of this chapter:

(i) The number of sealed inner liners acquired from other persons, including the date of acquisition, the number and, for sealed inner liners the size (e.g., five 10-gallon liners, etc.), of all sealed inner liners and mail-back packages acquired to inventory, the unique identification number of each sealed inner liner and mail-back package, and the name, address, and, for registrants, the registration number of the person from whom the sealed inner liners and mail-back packages were received, and

(ii) The date, place, and method of destruction; the number of sealed inner liners and mail-back packages destroyed; the name, address, and, for registrants, the registration number of the person from whom the sealed inner liners and mail-back packages were received; the number and, for sealed inner liners the size (e.g., five 10-gallon liners, etc.), of all sealed inner liners and mail-back packages destroyed; the unique identification number of each sealed inner liner and sealed mail-back package destroyed; and the name and signatures of the two employees of the registrant that witnessed the destruction.

(5) For all records, the record of receipt shall be maintained together with the corresponding record of return or destruction (DEA Form 41).

(f) *Records for collectors.* Each person registered or authorized to collect controlled substances from ultimate users shall maintain the following records:

(1) Mail-Back Packages:

(i) For unused packages that the collector makes available to ultimate users and other authorized non-registrants at the collector's registered address: The date made available, the number of packages, and the unique identification number of each package;

(ii) For unused packages provided to a third party to make available to ultimate users and other authorized non-registrants: The name of the third party and physical address of the location receiving the unused packages, date sent, and the number of unused packages sent with the corresponding unique identification numbers;

(iii) For sealed mail-back packages received by the collector: Date of receipt and the unique identification number on the individual package; and

(iv) For sealed mail-back packages destroyed on-site by the collector: Number of sealed mail-back packages destroyed, the date and method of destruction, the unique identification number of each mail-back package destroyed, and the names and signatures of the two employees of the registrant who witnessed the destruction.

(2) Collection receptacle inner liners:

(i) Date each unused inner liner acquired, unique identification number and size (e.g., 5-gallon, 10-gallon, etc.) of each unused inner liner acquired;

(ii) Date each inner liner is installed, the address of the location where each inner liner is installed, the unique identification number and size (e.g., 5-gallon, 10-gallon, etc.) of each installed inner liner, the registration number of the collector, and the names and signatures of the two employees that witnessed each installation;

(iii) Date each inner liner is removed and sealed, the address of the location from which each inner liner is removed, the unique identification number and size (e.g., 5-gallon, 10-gallon, etc.) of each inner liner removed, the registration number of the collector, and the names and signatures of the two employees that witnessed each removal;

(iv) Date each sealed inner liner is transferred to storage, the unique identification number and size (e.g., 5-gallon, 10-gallon, etc.) of each sealed inner liner stored, and the names and signatures of the two employees that transferred each sealed inner liner to storage;

(v) Date each sealed inner liner is transferred for destruction, the address and registration number of the reverse distributor or distributor to whom each sealed inner liner was transferred, the unique identification number and the size (e.g., 5-gallon, 10-gallon, etc.) of each sealed inner liner transferred, and the names and signatures of the two employees that transferred each sealed inner liner to the reverse distributor or distributor; and

(vi) For sealed inner liners destroyed on-site by the collector: The same information required of reverse distributors in paragraph (e)(4)(ii) of this section.

■ 21. In § 1304.25, revise the section heading and paragraphs (a)(9) and (b)(9) to read as follows:

§ 1304.25 Records for treatment programs that compound narcotics for treatment programs and other locations.

* * * * *

(a) * * *

(9) The quantity disposed of by destruction, including the reason, date, and manner of destruction.

(b) * * *

(9) The number of units of finished forms and/or commercial containers destroyed in any manner by the registrant, including the reason, date, and manner of destruction.

■ 22. Amend § 1304.33 by revising the section heading and paragraph (f) and adding paragraph (g) to read as follows:

§ 1304.33 Reports to Automation of Reports and Consolidated Orders System (ARCOS).

* * * * *

(f) *Exceptions.* (1) A registered institutional practitioner that repackages or relabels exclusively for distribution or that distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the registrant may be exempted from filing reports under this section by applying to the ARCOS Unit of the Administration.

(2) Registrants that acquire recalled controlled substances from ultimate users pursuant to § 1317.85 of this chapter may report as a single transaction all recalled controlled substances of the same name and finished form (e.g., all 10-milligram tablets or all 5-milligram concentration per fluid ounce or milliliter) received from ultimate users for the purpose of reporting acquisition transactions.

(g) *Exemptions.* (1) Collectors that acquire controlled substances from ultimate users are exempt from the ARCOS reporting requirements only with respect to controlled substances collected through mail-back programs and collection receptacles for the purpose of disposal.

(2) Reverse distributors and distributors that acquire controlled substances pursuant to § 1317.55(a) or (b) of this chapter are exempt from the ARCOS reporting requirements in this section with regard to any controlled substances acquired pursuant to § 1317.55(a) or (b) of this chapter.

* * * * *

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

■ 23. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

■ 24. In § 1305.03, add paragraphs (e), (f), and (g) to read as follows:

§ 1305.03 Distributions requiring a Form 222 or a digitally signed electronic order.

* * * * *

(e) Deliveries to an authorized DEA registrant by an ultimate user, a long-term care facility on behalf of an ultimate user who resides or has resided at that facility, or a person authorized to dispose of the ultimate user decedent's property.

(f) Distributions to reverse distributors and distributors by collectors and law enforcement pursuant to § 1317.55 of this chapter.

(g) Deliveries of controlled substances from ultimate users for the purpose of recalls pursuant to § 1317.85 of this chapter.

PART 1307—MISCELLANEOUS

■ 25. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b), unless otherwise noted.

■ 26. In § 1307.11, revise section heading and remove and reserve paragraph (a)(2).

The revision reads as follows:

§ 1307.11 Distribution by dispenser to another practitioner.

* * * * *

§ 1307.12 [Removed]

■ 27. Remove § 1307.12.

■ 28. Revise § 1307.13 to read as follows:

§ 1307.13 Incidental manufacture of controlled substances.

Any registered manufacturer who, incidentally but necessarily, manufactures a controlled substance as a result of the manufacture of a controlled substance or basic class of controlled substance for which he is registered and has been issued an individual manufacturing quota pursuant to part 1303 of this chapter (if such substance or class is listed in Schedule I or II) shall be exempt from the requirement of registration pursuant to part 1301 of this chapter and, if such incidentally manufactured substance is listed in Schedule I or II, shall be exempt from the requirement of an individual manufacturing quota pursuant to part 1303 of this chapter, if such substances are disposed of in accordance with part 1317 of this chapter.

§ 1307.21 [Removed]

■ 29. Remove § 1307.21.

■ 30. In § 1307.22, revise the section heading and the first sentence to read as follows:

§ 1307.22 Delivery of surrendered and forfeited controlled substances.

Any controlled substance surrendered by delivery to the Administration under part 1317 of this chapter or forfeited pursuant to section 511 of the Act (21 U.S.C. 881) may be delivered to any department, bureau, or other agency of the United States or of any State upon proper application addressed to the Office of Diversion Control, Drug Enforcement Administration.

* * * * *

■ 31. Add part 1317 to read as follows:

PART 1317—DISPOSAL

Sec.

Authority: 21 U.S.C. 821, 822, 823, 827, 828, 871(b), and 958.

§ 1317.01 Scope.

This part sets forth the rules for the delivery, collection, and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances that are lawfully possessed by registrants (subpart A) and non-registrants (subpart B). The purpose of such rules is to provide prompt, safe, and effective disposal methods while providing effective controls against the diversion of controlled substances.

Subpart A—Disposal of Controlled Substances by Registrants

§ 1317.05 Registrant disposal.

(a) *Practitioner inventory.* Any registered practitioner in lawful possession of a controlled substance in its inventory that desires to dispose of that substance shall do so in one of the following ways:

(1) Promptly destroy that controlled substance in accordance with subpart C of this part using an on-site method of destruction;

(2) Promptly deliver that controlled substance to a reverse distributor's registered location by common or contract carrier pick-up or by reverse distributor pick-up at the registrant's registered location;

(3) For the purpose of return or recall, promptly deliver that controlled substance by common or contract carrier pick-up or pick-up by other registrants at the registrant's registered location to: The registered person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf; or

(4) Request assistance from the Special Agent in Charge of the Administration in the area in which the practitioner is located.

(i) The request shall be made by submitting one copy of the DEA Form 41 to the Special Agent in Charge in the practitioner's area. The DEA Form 41 shall list the controlled substance or substances which the registrant desires to dispose.

(ii) The Special Agent in Charge shall instruct the registrant to dispose of the controlled substance in one of the following manners:

(A) By transfer to a registrant authorized to transport or destroy the substance;

(B) By delivery to an agent of the Administration or to the nearest office of the Administration; or

(C) By destruction in the presence of an agent of the Administration or other authorized person.

(5) In the event that a practitioner is required regularly to dispose of controlled substances, the Special Agent in Charge may authorize the practitioner to dispose of such substances, in accordance with subparagraph (a)(4) of this section, without prior application in each instance, on the condition that the practitioner keep records of such disposals and file periodic reports with the Special Agent in Charge summarizing the disposals. The Special Agent in Charge may place such conditions as he/she deems proper on practitioner procedures regarding the disposal of controlled substances.

(b) *Non-practitioner inventory.* Any registrant that is a non-practitioner in lawful possession of a controlled substance in its inventory that desires to dispose of that substance shall do so in one of the following ways:

(1) Promptly destroy that controlled substance in accordance with subpart C of this part using an on-site method of destruction;

(2) Promptly deliver that controlled substance to a reverse distributor's registered location by common or contract carrier or by reverse distributor pick-up at the registrant's registered location;

(3) For the purpose of return or recall, promptly deliver that controlled substance by common or contract carrier or pick-up at the registrant's registered location to: The registered person from whom it was obtained, the registered manufacturer of the substance, or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf; or

(4) Promptly transport that controlled substance by its own means to the registered location of a reverse distributor, the location of destruction, or the registered location of any person authorized to receive that controlled substance for the purpose of return or recall as described in paragraph (b)(3) of this section.

(i) If a non-practitioner transports controlled substances by its own means to an unregistered location for destruction, the non-practitioner shall do so in accordance with the procedures set forth at § 1317.95(c).

(ii) If a non-practitioner transports controlled substances by its own means to a registered location for any authorized purpose, transportation shall be directly to the authorized registered location and two employees of the transporting non-practitioner shall accompany the controlled substances to the registered destination location. Directly transported means the substances shall be constantly moving towards their final location and unnecessary or unrelated stops and stops of an extended duration shall not occur.

(c) *Collected controlled substances.* Any collector in lawful possession of a controlled substance acquired by collection from an ultimate user or other authorized non-registrant person shall dispose of that substance in the following ways:

(1) *Mail-back program.* Upon receipt of a sealed mail-back package, the collector shall promptly:

(i) Destroy the package in accordance with subpart C of this part using an on-site method of destruction; or

(ii) Securely store the package and its contents at the collector's registered location in a manner consistent with § 1301.75(c) of this chapter (for practitioners), or in a manner consistent with the security requirements for Schedule II controlled substances (for non-practitioners) until prompt on-site destruction can occur.

(2) *Collection receptacles.* Upon removal from the permanent outer container, the collector shall seal it and promptly:

(i) Destroy the sealed inner liner and its contents;

(ii) Securely store the sealed inner liner and its contents at the collector's registered location in a manner consistent with § 1301.75(c) of this chapter (for practitioners), or in a manner consistent with § 1301.72(a) of this chapter (for non-practitioners) until prompt destruction can occur; or

(iii) Securely store the sealed inner liner and its contents at a long-term care facility in accordance with § 1317.80(d).

(iv) *Practitioner methods of destruction.* Collectors that are practitioners (i.e., retail pharmacies and hospitals/clinics) shall dispose of sealed inner liners and their contents by utilizing any method in paragraph (a)(1), (a)(2), or (a)(4) of this section, or by delivering sealed inner liners and their contents to a distributor's registered location by common or contract carrier pick-up or by distributor pick-up at the collector's authorized collection location.

(v) *Non-practitioner methods of destruction.* Collectors that are non-practitioners (i.e., manufacturers, distributors, narcotic treatment programs, and reverse distributors) shall dispose of sealed inner liners and their contents by utilizing any method in paragraph (b)(1), (b)(2), or (b)(4) of this section, or by delivering sealed inner liners and their contents to a distributor's registered location by common or contract carrier or by distributor pick-up at the collector's authorized collection location for destruction. Freight forwarding facilities may not be utilized to transfer sealed inner liners and their contents.

§ 1317.10 Registrant return or recall.

(a) Each registrant shall maintain a record of each return or recall transaction in accordance with the information required of manufacturers in § 1304.22(a)(2)(iv) of this chapter.

(b) Each registrant that delivers a controlled substance in Schedule I or II for the purpose of return or recall shall use an order form in the manner described in part 1305 of this chapter.

(c) Deliveries for the purpose of return or recall may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned provided that advance notice of the return is provided and delivery is directly to an agent or employee of the person to whom the controlled substance is being returned.

§ 1317.15 Reverse distributor registration requirements and authorized activities.

(a) Any person that reverse distributes a controlled substance shall be registered with the Administration as a reverse distributor, unless exempted by law or otherwise authorized pursuant to this chapter.

(b) A reverse distributor shall acquire controlled substances from a registrant pursuant to §§ 1317.05 and 1317.55(a) and (c) in the following manner:

(1) Pick-up controlled substances from a registrant at the registrant's registered location or authorized collection site; or

(2) Receive controlled substances delivered by common or contract carrier or delivered directly by a non-practitioner registrant.

(i) Delivery to the reverse distributor by an authorized registrant directly or by common or contract carrier may only be made to the reverse distributor at the reverse distributor's registered location. Once en route, such deliveries may not be re-routed to any other location or person, regardless of registration status.

(ii) All controlled substance deliveries to a reverse distributor shall be personally received by an employee of the reverse distributor at the registered location.

(c) Upon acquisition of a controlled substance by delivery or pick-up, a reverse distributor shall:

(1) Immediately store the controlled substance, in accordance with the security controls in parts 1301 and 1317 of this chapter, at the reverse distributor's registered location or immediately transfer the controlled substance to the reverse distributor's registered location for secure storage, in accordance with the security controls in parts 1301 and 1317 of this chapter, until timely destruction or prompt return of the controlled substance to the registered manufacturer or other registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf;

(2) Promptly deliver the controlled substance to the manufacturer or another registrant authorized by the manufacturer to accept returns or recalls on the manufacturer's behalf; or

(3) Timely destroy the controlled substance in a manner authorized in subpart C of this part.

(d) A reverse distributor shall destroy or cause the destruction of any controlled substance received for the purpose of destruction no later than 30 calendar days after receipt.

Subpart B—Disposal of Controlled Substances Collected From Ultimate Users and Other Non-Registrants

§ 1317.30 Authorization to collect from non-registrants.

(a) The following persons are authorized to collect controlled substances from ultimate users and other non-registrants for destruction in compliance with this chapter:

(1) Any registrant authorized by the Administration to be a collector pursuant to § 1317.40; and

(2) Federal, State, tribal, or local law enforcement when in the course of official duties and pursuant to § 1317.35.

(b) The following non-registrant persons in lawful possession of a controlled substance in Schedules II, III, IV, or V may transfer that substance to the authorized persons listed in paragraph (a) of this section, and in a manner authorized by this part, for the purpose of disposal:

(1) An ultimate user in lawful possession of a controlled substance;

(2) Any person lawfully entitled to dispose of a decedent's property if that decedent was an ultimate user who died while in lawful possession of a controlled substance; and

(3) A long-term care facility on behalf of an ultimate user who resides or resided at such long-term care facility and is/was in lawful possession of a controlled substance, in accordance with § 1317.80 only.

§ 1317.35 Collection by law enforcement.

(a) Federal, State, tribal, or local law enforcement may collect controlled substances from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property using the following collection methods:

(1) Take-back events in accordance with § 1317.65;

(2) Mail-back programs in accordance with § 1317.70; or

(3) Collection receptacles located inside law enforcement's physical address.

(b) Law enforcement that conducts a take-back event or a mail-back program or maintains a collection receptacle should maintain any records of removal, storage, or destruction of the controlled substances collected in a manner that is consistent with that agency's recordkeeping requirements for illicit controlled substances evidence.

(c) Any controlled substances collected by law enforcement through a take-back event, mail-back program, or collection receptacle should be stored in a manner that prevents the diversion of controlled substances and is consistent with that agency's standard procedures for storing illicit controlled substances.

(d) Any controlled substances collected by law enforcement through a take-back event, mail-back program, or collection receptacle should be transferred to a destruction location in a manner that prevents the diversion of controlled substances and is consistent with that agency's standard procedures for transferring illicit controlled substances.

(e) Law enforcement that transfers controlled substances collected from ultimate users pursuant to this part to a reverse distributor for destruction should maintain a record that contains the following information: If a sealed inner liner as described in § 1317.60 is used, the unique identification number of the sealed inner liner transferred, and the size of the sealed inner liner transferred (e.g., 5-gallon, 10-gallon, etc.); if a mail-back package as described in § 1317.70 is used, the unique identification number of each package; the date of the transfer; and the name, address, and registration number of the reverse distributor to whom the controlled substances were transferred.

§ 1317.40 Registrants authorized to collect and authorized collection activities.

(a) Manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that desire to be collectors shall modify their registration to obtain authorization to be a collector in accordance with § 1301.51 of this chapter. Authorization to be a collector is subject to renewal. If a registrant that is authorized to collect ceases activities as a collector, such registrant shall notify the Administration in accordance with § 1301.52(f) of this chapter.

(b) Collection by registrants shall occur only at the following locations:

(1) Those registered locations of manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that are authorized for collection; and

(2) Long-term care facilities at which registered hospitals/clinics or retail pharmacies are authorized to maintain collection receptacles.

(c) Collectors may conduct the following activities:

(1) Receive and destroy mail-back packages pursuant to § 1317.70 at an authorized registered location that has an on-site method of destruction;

(2) Install, manage, and maintain collection receptacles located at their authorized collection location(s) pursuant to §§ 1317.75 and 1317.80; and

(3) Promptly dispose of sealed inner liners and their contents as provided for in § 1317.05(c)(2).

§ 1317.55 Reverse distributor and distributor acquisition of controlled substances from collectors or law enforcement.

(a) A reverse distributor is authorized to acquire controlled substances from law enforcement that collected the substances from ultimate users. A reverse distributor is authorized to acquire controlled substances collected through a collection receptacle in accordance with §§ 1317.75 and 1317.80.

(b) A distributor is authorized to acquire controlled substances collected through a collection receptacle in accordance with §§ 1317.75 and 1317.80.

(c) A reverse distributor or a distributor that acquires controlled substances in accordance with paragraph (a) or (b) of this section shall:

(1) Acquire the controlled substances in the manner authorized for reverse distributors in § 1317.15(b)(1) and (2);

(2) Dispose of the controlled substances in the manner authorized for reverse distributors § 1317.15(c) and (d); and

(3) Securely store the controlled substances in a manner consistent with the security requirements for Schedule II controlled substances until timely destruction can occur.

§ 1317.60 Inner liner requirements.

(a) An inner liner shall meet the following requirements:

(1) The inner liner shall be waterproof, tamper-evident, and tear-resistant;

(2) The inner liner shall be removable and sealable immediately upon removal without emptying or touching the contents;

(3) The contents of the inner liner shall not be viewable from the outside when sealed;

(4) The size of the inner liner shall be clearly marked on the outside of the liner (e.g., 5-gallon, 10-gallon, etc.); and

(5) The inner liner shall bear a permanent, unique identification number that enables the inner liner to be tracked.

(b) Access to the inner liner shall be restricted to employees of the collector.

(c) The inner liner shall be sealed by two employees immediately upon removal from the permanent outer container and the sealed inner liner shall not be opened, x-rayed, analyzed, or otherwise penetrated.

§ 1317.65 Take-back events.

(a) Federal, State, tribal, or local law enforcement may conduct a take-back event and collect controlled substances from ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property in accordance with this section. Any person may partner with law enforcement to hold a collection take-back event in accordance with this section.

(b) Law enforcement shall appoint a law enforcement officer employed by the agency to oversee the collection. Law enforcement officers employed and authorized by the law enforcement agency or law enforcement component of a Federal agency conducting a take-back event shall maintain control and custody of the collected substances from the time the substances are collected from the ultimate user or person authorized to dispose of the ultimate user decedent's property until secure transfer, storage, or destruction of the controlled substances has occurred.

(c) Each take-back event should have at least one receptacle for the collection of controlled substances. The collection receptacle should be a securely locked, substantially constructed container with an outer container and a removable inner liner as specified in § 1317.60 of this chapter. The outer container should include a small opening that allows contents to be added to the inner liner, but that does not allow removal of the inner liner's contents.

(d) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or person entitled to dispose of an ultimate user decedent's property may be collected. Controlled and non-controlled substances may be collected together and be comingled, although comingling is not required.

(e) Only ultimate users and persons entitled to dispose of an ultimate user decedent's property in lawful possession of a controlled substance in Schedule II, III, IV, or V may transfer such substances to law enforcement during the take-back event. No other person may handle the controlled substances at any time.

§ 1317.70 Mail-back programs.

(a) A mail-back program may be conducted by Federal, State, tribal, or local law enforcement or any collector. A collector conducting a mail-back program shall have and utilize at their registered location a method of destruction consistent with § 1317.90 of this chapter.

(b) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or person lawfully entitled to dispose of an ultimate user decedent's property may be collected. Controlled and non-controlled substances may be collected together and be comingled, although comingling is not required.

(c) Collectors or law enforcement that conduct a mail-back program shall make packages available (for sale or for free) as specified in this paragraph to ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property, for the collection of controlled substances by common or contract carrier. Any person may partner with a collector or law enforcement to make such packages available in accordance with this section. The packages made available shall meet the following specifications:

(1) The package shall be nondescript and shall not include any markings or other information that might indicate that the package contains controlled substances;

(2) The package shall be water- and spill-proof; tamper-evident; tear-resistant; and sealable;

(3) The package shall be preaddressed with and delivered to the collector's registered address or the participating law enforcement's physical address;

(4) The cost of shipping the package shall be postage paid;

(5) The package shall have a unique identification number that enables the package to be tracked; and

(6) The package shall include instructions for the user that indicate the process for mailing back the package, the substances that can be sent, notice that packages may only be mailed from within the customs territory of the United States (the 50 States, the District of Columbia, and Puerto Rico), and notice that only packages provided by the collector will be accepted for destruction.

(d) Ultimate users and persons lawfully entitled to dispose of an ultimate user decedent's property shall not be required to provide any personally identifiable information when mailing back controlled substances to a collector. The collector or law enforcement may implement a system that allows ultimate users or persons lawfully entitled to dispose of an ultimate user decedent's property to notify the collector or law enforcement that they are sending one of the designated packages by giving the unique identification number on the package.

(e) A collector that conducts a mail-back program pursuant to paragraph (a) shall:

(1) Accept only those controlled substances contained within packages that the collector made available for the collection of controlled substances by mail and packages that are lawfully forwarded to the collector pursuant to paragraph (e)(3) of this section.

(2) Within three business days of receipt, notify the Field Division Office of the Administration in their area of the receipt of a package that likely contains controlled substances that the collector did not make available or did not agree to receive pursuant to subparagraph (e)(3) of this section.

(3) When discontinuing activities as a collector or ceasing an authorized mail-back program:

(i) Make a reasonable effort to notify the public prior to discontinuing such activities or ceasing the authorized mail-back program; and

(ii) Obtain the written agreement of another collector that has and utilizes at its registered location a method of destruction consistent with § 1317.90 of this chapter to receive all remaining mail-back packages that were disseminated but not returned and arrange for the forwarding of only such packages to that location.

(f) Only law enforcement officers employed by the law enforcement agency or law enforcement component of a Federal agency and employees of the collector shall handle packages received through an authorized mail-back program. Upon receipt of a mail-back package by a collector conducting a mail-back program, the package shall not be opened, x-rayed, analyzed, or otherwise penetrated.

§ 1317.75 Collection receptacles.

(a) Collectors or Federal, State, tribal, or local law enforcement may manage and maintain collection receptacles for disposal.

(b) Only those controlled substances listed in Schedule II, III, IV, or V that are lawfully possessed by an ultimate user or other authorized non-registrant person may be collected. Controlled and non-controlled substances may be collected together and be comingled, although comingling is not required.

(c) Collectors shall only allow ultimate users and other authorized non-registrant persons in lawful possession of a controlled substance in Schedule II, III, IV, or V to deposit such substances in a collection receptacle at a registered location. Collectors shall not permit an ultimate user to transfer such substance to any person for any reason. Once a substance has been deposited into a collection receptacle, the substance shall not be counted,

sorted, inventoried, or otherwise individually handled.

(d) Collection receptacles shall be securely placed and maintained:

(1) Inside a collector's registered location, inside law enforcement's physical location, or at an authorized long-term care facility;

(2) At a registered location, be located in the immediate proximity of a designated area where controlled substances are stored and at which an employee is present (e.g., can be seen from the pharmacy counter). Except as follows:

(i) At a hospital/clinic: A collection receptacle shall be located in an area regularly monitored by employees, and shall not be located in the proximity of any area where emergency or urgent care is provided;

(ii) At a narcotic treatment program: A collection receptacle shall be located in a room: That does not contain any other controlled substances and is securely locked with controlled access;

(iii) At a long-term care facility: A collection receptacle shall be located in a secured area regularly monitored by long-term care facility employees.

(e) A controlled substance collection receptacle shall meet the following design specifications:

(1) Be securely fastened to a permanent structure so that it cannot be removed;

(2) Be a securely locked, substantially constructed container with a permanent outer container and a removable inner liner as specified in § 1317.60 of this chapter;

(3) The outer container shall include a small opening that allows contents to be added to the inner liner, but does not allow removal of the inner liner's contents;

(4) The outer container shall prominently display a sign indicating that only Schedule II–V controlled and non-controlled substances, if a collector chooses to comingle substances, are acceptable substances (Schedule I controlled substances, controlled substances that are not lawfully possessed by the ultimate user, and other illicit or dangerous substances are not permitted); and

(f) Except at a narcotic treatment program, the small opening in the outer container of the collection receptacle shall be locked or made otherwise inaccessible to the public when an employee is not present (e.g., when the pharmacy is closed), or when the collection receptacle is not being regularly monitored by long-term care facility employees.

(g) The installation and removal of the inner liner of the collection receptacle shall be performed by or under the supervision of at least two employees of the authorized collector.

§ 1317.80 Collection receptacles at long-term care facilities.

(a) A long-term care facility may dispose of controlled substances in Schedules II, III, IV, and V on behalf of an ultimate user who resides, or has resided, at such long-term care facility by transferring those controlled substances into an authorized collection receptacle located at that long-term care facility. When disposing of such controlled substances by transferring those substances into a collection receptacle, such disposal shall occur immediately, but no longer than three business days after the discontinuation of use by the ultimate user. Discontinuation of use includes a permanent discontinuation of use as directed by the prescriber, as a result of the resident's transfer from the long-term care facility, or as a result of death.

(b) Only authorized retail pharmacies and hospitals/clinics with an on-site pharmacy may install, manage, and maintain collection receptacles at long-term care facilities and remove, seal, transfer, and store, or supervise the removal, sealing, transfer, and storage of sealed inner liners at long-term care facilities. Collectors authorized to install, manage, and maintain collection receptacles at long-term care facilities shall comply with all requirements of this chapter, including §§ 1317.60, 1317.75, and 1317.80.

(c) The installation, removal, transfer, and storage of inner liners shall be performed either: By or under the supervision of one employee of the authorized collector and one supervisor-level employee of the long-term care facility (e.g., a charge nurse or supervisor) designated by the authorized collector; or, by or under the supervision of two employees of the authorized collector.

(d) Upon removal, sealed inner liners may only be stored at the long-term care facility for up to three business days in a securely locked, substantially constructed cabinet or a securely locked room with controlled access until transfer in accordance with § 1317.05(c)(2)(iv).

(e) Neither a hospital/clinic with an on-site pharmacy nor a retail pharmacy shall operate a collection receptacle at a long-term care facility until its registration has been modified in accordance with § 1301.51 of this chapter.

§ 1317.85 Ultimate user delivery for the purpose of recall or investigational use of drugs.

(a) In the event of a product recall, an ultimate user in lawful possession of a controlled substance listed in Schedule II, III, IV, or V may deliver the recalled substance to the manufacturer of the substance or another registrant authorized by the manufacturer to accept recalled controlled substances on the manufacturer's behalf.

(b) An ultimate user who is participating in an investigational use of drugs pursuant to 21 U.S.C. 355(i) and 360b(j) and wishes to deliver any unused controlled substances received as part of that research to the registered dispenser from which the ultimate user obtained those substances may do so in accordance with regulations promulgated by the Secretary of Health and Human Services pursuant to 21 U.S.C. 355(i) and 360b(j).

Subpart C—Destruction of Controlled Substances

§ 1317.90 Methods of destruction.

(a) All controlled substances to be destroyed by a registrant, or caused to be destroyed by a registrant pursuant to § 1317.95(c), shall be destroyed in compliance with applicable Federal, State, tribal, and local laws and regulations and shall be rendered non-retrievable.

(b) Where multiple controlled substances are comingled, the method of destruction shall be sufficient to render all such controlled substances non-retrievable. When the actual substances collected for destruction are unknown but may reasonably include controlled substances, the method of destruction shall be sufficient to render non-retrievable any controlled substance likely to be present.

(c) The method of destruction shall be consistent with the purpose of rendering all controlled substances to a non-retrievable state in order to prevent diversion of any such substance to illicit purposes and to protect the public health and safety.

§ 1317.95 Destruction procedures.

The destruction of any controlled substance shall be in accordance with the following requirements:

(a) *Transfer to a person registered or authorized to accept controlled substances for the purpose of destruction.* If the controlled substances are transferred to a person registered or authorized to accept the controlled substances for the purpose of destruction, two employees of the transferring registrant shall load and

unload or observe the loading and unloading of any controlled substances until transfer is complete.

(b) *Transport to a registered location.* If the controlled substances are transported by a registrant to a registered location for subsequent destruction, the following procedures shall be followed:

(1) Transportation shall be directly to the registered location (the substances shall be constantly moving towards their final location and unnecessary or unrelated stops and stops of an extended duration shall not occur);

(2) Two employees of the transporting registrant shall accompany the controlled substances to the registered location;

(3) Two employees of the transporting registrant shall load and unload or observe the loading and unloading of the controlled substances until transfer is complete;

(c) *Transport to a non-registered location.* If the controlled substances are transported by a registrant to a destruction location that is not a registered location, the following procedures shall be followed:

(1) Transportation shall be directly to the destruction location (the substances shall be constantly moving towards their final destruction location and unnecessary or unrelated stops and stops of an extended duration shall not occur);

(2) Two employees of the transporting registrant shall accompany the controlled substances to the destruction location;

(3) Two employees of the transporting registrant shall load and unload or observe the loading and unloading of the controlled substances;

(4) Two employees of the transporting registrant shall handle or observe the handling of any controlled substance until the substance is rendered non-retrievable; and

(5) Two employees of the transporting registrant shall personally witness the destruction of the controlled substance until it is rendered non-retrievable.

(d) *On-site destruction.* If the controlled substances are destroyed at a registrant's registered location utilizing an on-site method of destruction, the following procedures shall be followed:

(1) Two employees of the registrant shall handle or observe the handling of any controlled substance until the substance is rendered non-retrievable; and

(2) Two employees of the registrant shall personally witness the destruction of the controlled substance until it is rendered non-retrievable.

Dated: August 25, 2014.

Michele M. Leonhart,

Administrator.

[FR Doc. 2014–20926 Filed 9–8–14; 8:45 am]

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Part III

Pension Benefit Guaranty Corporation

Privacy Act of 1974; Systems of Records; Notice

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of retirement of systems of records, revision of routine uses, revision of purpose and routine uses, technical revisions to systems of records, and establishment of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Pension Benefit Guaranty Corporation (PBGC) is proposing to: (1) Retire four existing systems of records, (2) revise the routine uses to an existing system of records, (3) revise the purpose and routine uses to an existing system of records, (4) add one exemption to three existing systems of records, (5) make technical and clarifying changes to seventeen existing systems of records, and (6) establish a new systems of records. The revisions implemented under this republication are corrective and administrative changes that refine previously published system of records notices and present them in a clear and cohesive format.

DATES: Comments must be received on or before October 9, 2014. The revised and additional systems of records described herein will become effective October 24, 2014, without further notice, unless comments results in a contrary determination and a notice is published to that effect.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Andrew Seff, Assistant General Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW., Washington, DC 20005, 202–326–4400, extension 3228. For access to any of the PBGC's systems of records, contact Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, at the above address, 202–326–4040.

SUPPLEMENTARY INFORMATION:

(1) PBGC Is Proposing To Retire Four Systems of Records

Pursuant the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Pension Benefit Guaranty Corporation (PBGC) is retiring the following four systems of records notices: PBGC–4, Employee Travel Records—PBGC (last published at 77 FR 59252 (September 26, 2012)), PBGC–5, Personnel Files—PBGC (last published at 77 FR 59252 (September 26, 2012)), PBGC–18, Office of Negotiations and Restructuring Risk Management Early Warning System—PBGC (last published at 77 FR 59252 (September 26, 2012)), and PBGC–20, Identity Management System (IDMS) (last published at 77 FR 59252 (September 26, 2012)).

With regard to PBGC–4, PBGC will continue to collect and maintain records regarding individuals who use PBGC's travel and transportation resources and will rely upon the existing Federal Government-wide system of records titled GSA/GOVT–4 (Contracted Travel Service Program (50 FR 20294 April 15, 1985), which is written to cover all Federal travel service programs.

With regard to PBGC–5, PBGC will continue to collect and maintain personnel records and will rely upon the existing Federal Government-wide systems of records titled OPM/GOVT–1, General Personnel Records (71 FR 35342 June 19, 2006) and OPM/GOVT–2, Employee Performance File System of Records (71 FR 35347 June 19, 2006), which are written to cover all general Federal Government personnel records.

With regard to PBGC–18, PBGC's Office of Negotiations and Restructuring will continue to maintain its Risk Management and Early Warning Program, but because none of the program records are retrieved by individuals' personally identifiable information, the program does not constitute a system of records as defined by the Privacy Act.

With regard to PBGC–20, PBGC will continue to collect and maintain records pertaining to the Personal Identity Verification Management System and will rely upon the existing Federal Government-wide system of records titled GSA/GOVT–7 Personal Identity Verification Identity Management System (73 FR 22377 April 25, 2008), which is written to cover all PIV IDMS records of participating agencies.

Eliminating these notices will have no adverse impacts on individuals, but will promote the overall streamlining and management of PBGC Privacy Act record systems.

(2) PBGC Is Proposing To Revise Its Routine Uses for PBGC–6

PBGC is proposing to reorder the routine uses for PBGC–6 (this change is being made to all existing systems of records to the extent necessary to make all of PBGC's notices uniform in this regard).

PBGC is proposing to revise routine use 5 (last published as routine use 4) PBGC–6, Plan Participant and Beneficiary Data—PBGC (last revised at 78 FR 64031 (October 25, 2013)). The existing routine use allows disclosure of payees' names, addresses, and telephone numbers, and "information pertaining to debts owed to by such payees" to the Department of Treasury or a debt collection agency or firm to collect a claim. PBGC is proposing that the phrase, "information pertaining to debts owed to by such payees," be changed to, "information related to how the PBGC determined that a debt was owed by such payees . . ." The amended routine use better describes the information that PBGC periodically discloses under the routine use.

PBGC is also proposing to add two additional routine uses to PBGC–6. Routine use 15 will read, "Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney." This routine use is necessary to allow PBGC to notify an agent that he/she no longer has power of attorney for a given individual because the individual has provided PBGC with written notice of a new power of attorney. This routine use will make it possible for PBGC to avoid delays and confusion when an individual changes his/her power of attorney while interacting or communicating with PBGC.

Routine use 16 will read, "Name and date of birth of a participant's beneficiary may be provided to that participant upon request by that participant." This routine use is necessary to allow PBGC to better respond to requests from participants for "a copy of my file." Presently, when responding to such a request, PBGC withholds the personal information (i.e. name, date of birth, address, social

security number, etc.) of a beneficiary that is contained in participant's file, even though it was often the participant who originally provided the beneficiary's personal information (as a function of naming the individual as a beneficiary), because it is personally identifiable information about an individual other than the requester. By allowing PBGC to disclose the name and date of birth of a participant's beneficiary to that participant, routine use 16 will allow PBGC to provide sufficient information about a beneficiary for a participant to know who he/she named as a beneficiary while still protecting the beneficiary's privacy (e.g. not disclosing the beneficiary's social security number). This routine use will improve customer service without sacrificing any individuals' privacy interests.

(3) PBGC Is Proposing To Revise the Purpose of and Routine Uses to PBGC–11

PBGC is proposing to revise the purpose of the PBGC–11, Call Detail Records (last revised at 77 FR 59252 (September 26, 2012)). The existing purpose focuses on operating costs, one element of which is monitoring employees' phone usage. Operating costs are no longer a concern, but PBGC continues to use the system of records to monitor employees' phone usage. PBGC is therefore proposing to narrow the purpose of PBGC–11 accordingly.

In accordance with the proposed narrower purpose, PBGC is proposing to delete Routine Uses 1 and 2 of PBGC–11.

(4) PBGC Is Proposing To Add Exemption (k)(2) to Three of Its Existing Systems of Records

PBGC is proposing to add exemption (k)(2) to PBGC–8, Employee Relations Files, PBGC–12, Personnel Security Investigation Records, and PBGC–19, Office of General Counsel Case Management System. Adding this exemption will permit PBGC to assist civil and criminal law enforcement when necessary without unfairly or inappropriately limiting any individuals' access to Privacy Act records. This exemption will also be included in PBGC's new systems of records, PBGC–23, Internal Investigations of Allegations of Harassing Conduct.

(5) Pbgc Is Proposing To Make Technical and Clarifying Amendments to Seventeen Systems of Records

PBGC is proposing to correct and update the security classification, system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, purpose(s), routine uses of records maintained in the system, including categories of users and the purposes of such uses, disclosure to consumer reporting agencies, storage, retrievability, safeguards, retention and disposal, system manager(s) and address, notification procedure, record access procedures, contesting record procedures, record source categories, and systems exempted from certain provisions of the Act of PBGC–1, Correspondence Between the PBGC and Persons Outside of the PBGC (last published at 77 FR 59252 (September 26, 2012)), PBGC–2, Disbursements (last published at 78 FR 64031 (October 25, 2013)), PBGC–3, Employee Payroll, Leave, and Attendance Records (last published at 77 FR 59252 (September 26, 2012)), PBGC–6, Plan Participant and Beneficiary Data (last published at 78 FR 64031 (October 25, 2013)), PBGC–8, Employee Relations Files (last published at 77 FR 59252 (September 26, 2012)), PBGC–9, Plan Participant and Beneficiary Address Identification File (last published at 77 FR 59252 (September 26, 2012)), PBGC–10, Administrative Appeals File (last published at 77 FR 59252 (September 26, 2012)), PBGC–11, Call Detail Records (last published at 77 FR 59252 (September 26, 2012)), PBGC–12, Personnel Security Investigation Records (last published at 77 FR 59252 (September 26, 2012)), PBGC–13, Debt Collection (last published at 77 FR 59252 (September 26, 2012)), PBGC–14, My Plan Administration Account Authentication Records (last published at 77 FR 59252 (September 26, 2012)), PBGC–15, Emergency Notification Records (last published at 77 FR 59252 (September 26, 2012)), PBGC–16, Employee Online Directory (last published at 77 FR 59252 (September 26, 2012)), PBGC–17, Inspector General Investigative File System (last published at 77 FR 59252 (September 26, 2012)), PBGC–19, Office of General Counsel Case Management System (last published at 77 FR 59252 (September 26, 2012)), PBGC–21, Reasonable Accommodation Records (last published at 78 FR 64031 (October 25, 2013)), and PBGC–22, Telework and Alternative Worksite Records (last published at 78 FR 64031 (October 25, 2013)). These amendments, the majority of which are non-substantive, will make the systems of records notices more accurate and easier to understand, individually, and when read together.

PBGC is also proposing to amend the names of PBGC–1, Correspondence Between the PBGC and Persons Outside of the PBGC–PBGC, PBGC–9, Plan Participant and Beneficiary Address Identification File, PBGC–14, My Plan Administration Account Authentication Records, and PBGC–16, Employee Online Directory—PBGC. PBGC–1 will now be named Congressional Correspondence, PBGC–9 will now be named Unclaimed Pensions, PBGC–14 will now be named My Plan Administration Account Records, and PBGC–16 will now be named People Search. These amendments make the system names more accurate of the respective systems of records.

(6) PBGC Is Proposing To Establish a New System Of Records

PBGC is proposing establish a new system of records titled, "PBGC–23, Internal Investigations of Allegations of Harassing Conduct—PBGC." The proposed system of records is necessary to carry out PBGC's Prevention of Workplace Harassment Policy and will cover files that identify by name, or other personal identifier, individuals who have complained that they have been subjected to harassment in the workplace, as well as individuals about whom such complaints have been made. These files may include: Complaints (including a completed complaint form), details pertaining to interim measures considered and/or taken, investigation notes, witness statements, emails and other evidence collected during an investigation, correspondence, communications with PBGC's Office of General Counsel, results of an investigation, and close-out memoranda. The Human Resources Department, as it has always done, will continue to respect the privacy of individuals named in these files and will disclose, within the boundaries of the law, the least amount of information necessary to perform its responsibilities.

The collection and maintenance of records subject to this system are not new because records of the same type have been collected and maintained by the Human Resources since its establishment. Those records, however, were not previously maintained or retrieved by a name or other personal identifier. With the implementation of new harassment investigation procedures (scheduled to become effective on October 1, 2014), which includes a new record-keeping scheme, the records will be in a system of records, as defined in *The Privacy Act Implementation: Guidelines and Responsibilities,* 40 FR 28,498 (July 9, 1975).

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposal of these two systems of records. A report on the proposed systems has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, PBGC's Prefatory Statement of General Routine Uses, the amended systems of records, and the new systems of records are published in full below with changes italicized.

Issued in Washington, DC, this 3rd day of September, 2014.

Alice Maroni

Acting Director, Pension Benefit Guaranty Corporation.

Prefatory Statement of General Routine Uses

The following routine uses are incorporated by reference into various systems of records, as set forth below.

G1. Routine Use—Law Enforcement: In the event that a system of records maintained by the PBGC to carry out its functions indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

G2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed to a federal, state, or local agency or to another public or private source maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if and to the extent necessary to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the retention of a security clearance, or the letting of a contract.

G3. Routine Use—Disclosure of Existence of Record Information: With the approval of the Director, Human Resources Department (or his or her designee), the fact that this system of records includes information relevant to a federal agency's decision in connection with the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that federal agency.

G4. Routine Use—Disclosure in Litigation: A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which the PBGC, an employee of the PBGC in his or her official capacity, or an employee of the PBGC in his or her individual capacity if the PBGC (or the Department of Justice ("DOJ")) has agreed to represent him or her is a party, or the United States or any other federal agency is a party and the PBGC determines that it has an interest in the proceeding, if the PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which the PBGC collected the information.

G5. Routine Use—Disclosure to the Department of Justice in Litigation: When the PBGC, an employee of the PBGC in his or her official capacity, or an employee of the PBGC in his or her individual capacity whom the PBGC has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other federal agency is a party and the PBGC determines that it has an interest in the proceeding, a record from this system of records may be disclosed to the DOJ if the PBGC is consulting with the DOJ regarding the proceeding or has decided that the DOJ will represent the PBGC, or its interest, in the proceeding and the PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which the PBGC collected the information.

G6. Routine Use—Disclosure to OMB: A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

G7. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

G8. Routine Use—Disclosure to Labor Organizations: A record from this system of records may be disclosed to an official of a labor organization recognized under 5 U.S.C. Chapter 71 when necessary for the labor organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

G9. Routine Use—Disclosure in Response to a Federal Data Breach. A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) PBGC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) PBGC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the PBGC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with PBGC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

G10. Routine Use—Contractors, Experts, and Consultants. To contractors, experts, consultants, and the agents of thereof, and others performing or working on a contract, service, cooperative agreement, or other assignment for Pension Benefit Guaranty Corporation, (PBGC) when necessary to accomplish an agency function. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to PBGC employees.

G11. Routine Use—Records Management. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. §§ 2904 and 2906.

G12. Routine Use—Gathering Information. To any source from which information is requested in the course of processing a grievance, investigation, arbitration, or other litigation, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

G13. Routine Use—Disclosure to a Federal Agency. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

PBGC–1

SYSTEM NAME:

Congressional Correspondence—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have corresponded with PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received; replies to such correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; *and* 5 U.S.C. 301

PURPOSE(S):

This system of records is maintained *to catalog and respond to correspondence received from members of Congress.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G11 apply to this system of records (see Prefatory Statement of General Routine Uses).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in *paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved by* name of the correspondent.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed *beyond recognition.* Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Communications Outreach and Legislative Affairs, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Correspondents; agency employees preparing responses to incoming correspondence or who generate original correspondence in their official capacities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–2

SYSTEM NAME:

Disbursements—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, *and/or field benefit administrator, plan administrator, and paying agent worksites.*

Records may also be kept at an additional location as backup for Continuity of Operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are consultants and vendors to the PBGC; *PBGC employees; and any other individuals who receive payments from PBGC.*

CATEGORIES OF RECORDS IN THE SYSTEMS:

Acquisition data for the procurement of goods and services; *invoices;* payment vouchers; Commercial and Government Entity (CAGE) codes; Dun & Bradstreet

Data Universal Numbering System (DUNS) numbers; *supplier status;* Web site; name; address; taxpayer identification number; *bank information; Social Security number; and other information related to the disbursements of funds.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

This system of records is maintained for use in determining amounts to be paid and in effecting payments by the Department of the Treasury *on behalf of PBGC.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G7, *and* G9 through G12 apply to this system of records *(see Prefatory Statement of General Routine Uses).*

2. A record from this system of records may be transmitted to the United States Department of the Treasury to effect payments to consultants and vendors, or to verify consultants' and vendors' eligibility to receive payments.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by PBGC in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are *retrieved* by *any one or more of the following:* name, tax payer identification number; and contract number.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and are protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper *are destroyed beyond recognition.* Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street, NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals and PBGC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–3

SYSTEM NAME:

Employee Payroll, Leave, and Attendance Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former *PBGC* employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel information, *including* names, addresses, social security numbers, employee numbers, and notifications of personnel actions payroll *i*nformation, *including* co-owner and/or beneficiary of bonds, marital status and number of dependents, child support enforcement court orders, debts owed to PBGC, garnishments, personal bank account and direct deposit information, tax information, *and* other deductions; salary data; fiscal year data; *and* time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S):

This system of records is maintained to perform *agency* functions involving employee leave, attendance, and payments, including determinations relating to the amounts to be paid to employees, the distribution of pay according to employee directions (for allotments, to financial institutions, and for other authorized purposes), tax withholdings and other authorized deductions, and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the United States Department of the Interior, the United States Department of Labor, and the United States Department of the Treasury to effect payments to employees.

3. Payments owed to PBGC through current and former employees may be shared with the Department of the Interior for the purposes of offsetting the employee's salary. Payments owed to PBGC through current and former employees who become delinquent in repaying the necessary funds may be shared with the Department of Treasury for the purposes of offsetting the employee's salary.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in *paper* and/or *electronic* form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are *retrieved* by any one or more of the following: *name; employee* number; or social security number.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street, NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; *subject individuals' supervisor(s); subject individuals' timekeeper(s);* and the Office of Personnel Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–6

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrator, plan administrator, and paying agent worksites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered ERISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; telephone numbers; sex; social security numbers and other Social Security Administration information; dates of

birth; dates of hire; salary; marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including *records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA;* health-related information; *powers of attorney;* insurance information where plan benefits are provided by private insurers; pension plan names and numbers; initial and final PBGC determinations (*see* 29 CFR 4003.21 and 4003.59); *and other records relating to debts owed to PBGC.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 26 U.S.C. 6103; *29 U.S.C. 1302;* 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

This system of records is maintained for use in determining whether participants, alternate payees, and beneficiaries are eligible for benefits under plans covered by ERISA, determining supplemental payments to be paid to those persons by a party other than PBGC, determining the amounts of benefits to be paid, making benefit payments, collecting benefit overpayments, and complying with statutory and regulatory mandates.

Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with PBGC's benefit payment services and to track (for follow-up) those who do not respond to surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, G2, G4 through G7, *and* G9 through G12 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees:

a. To enable these third parties to make or determine benefit payments, or

b. To report to the IRS the amounts of benefits paid (or required to be paid) and taxes withheld.

3. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

4. A record from this system of records may be disclosed, upon request for a purpose authorized under Title IV of ERISA, to an official of a labor organization recognized as the current or former collective bargaining representative of the individual about whom a request is made.

5. Payees' names, addresses, telephone numbers, and *information related to how PBGC determined that a debt was* owed by such payees to the PBGC may be disclosed to the Department of the Treasury or a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract issued by the federal government that binds any such contractor or employee of such contractor to the penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

6. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration (FAA) to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

7. The name of a participant's pension plan, the actual or estimated amount of a participant's benefit under Title IV of ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, former spouse, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). The PBGC will disclose the information only upon the receipt of a written request by a prospective alternate payee, or the payee's representative, that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. The PBGC will notify the participant of any information disclosed to a prospective alternate payee or their representative under this routine use.

8. Information from a participant's initial determination under 29 CFR 4003.1(b) (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to an alternate payee, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how the PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51. The PBGC may notify the participant of the information disclosed to an alternate payee or their representative under this routine use.

9. Information from an alternate payee's initial determination under 29 CFR 4003.1(b) (excluding the alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how the PBGC determined the benefit due the participant so that the participant can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51. The PBGC may notify the alternate payee of the information disclosed to a participant or their representative under this routine use.

10. Information used in calculating the benefit, or share of the benefit, of a participant or alternate payee (excluding the participant's or alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant or an alternate payee, or their representative, when (a) a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) affects the calculation of the benefit, or share of the benefit, of the participant or alternate payee; and (b) the information is needed to explain to the participant or alternate payee how the PBGC calculated the benefit, or share of the benefit, of the participant or alternate payee. The PBGC may notify the participant or the alternate payee, or their representative, as appropriate, of the information disclosed to the participant or the alternate payee, or their representative, under this routine use.

11. The names, addresses, social security numbers, dates of birth, and the pension plan name and number of eligible PBGC pension recipients may be disclosed to the Department of the Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance

payment of the tax credit under 26 U.S.C. 7527.

12. Names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients residing in a particular state may be disclosed to the state's workforce agency if the agency received a National Emergency Grant from the Department of Labor under the Workforce Investment Act of 1988 to provide health insurance coverage assistance and support services for state residents under 29 U.S.C. 2918(a) and (f).

13. Payees' names, social security numbers, and dates of birth may be provided to the Department of the Treasury's Bureau of the Public Debt, the Social Security Administration, and the Internal Revenue Service to verify payees' eligibility to receive payments.

14. Names and social security numbers of participants and beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have established electronic debit card accounts used for the electronic deposit of federal benefit payments.

15. Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney.

16. The name and date of birth of a participant's beneficiary may be provided to that participant upon request by that participant.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(*e*).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/*or* electronic form, *including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved* by *any one or more of the following: name; social security number; customer identification number; date of birth; or date of death.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper and electronic records that contain federal tax information are stored separately and are kept in locked file cabinets in areas of restricted access under procedures that meet IRS safeguarding standards.

Other paper and microfiche records *that do not contain federal tax information* are kept in file folders in areas of restricted access that are locked after office hours. Electronic records *that do not contain federal tax information* are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed *beyond recognition.* Records existing on other media and computer storage media are destroyed according to the applicable PBGC Information Assurance Handbook guidance on media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefits Administration and Payment Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Plan administrators*;* participants, alternate payees, and beneficiaries*; agents listed on power of attorneys; field benefit administrator offices; the SSA;* the FAA*;* and the IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–8

SYSTEM NAME:

Employee Relations Files—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PBGC employees who have initiated grievances under an

administrative grievance procedure or under an applicable collective bargaining agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative and union grievances submitted by PBGC employees; agency responses to employees' employees grievances; employees' appeals of responses to grievances; agency responses to such appeals; investigative *notes;* records of proceedings; appeal decisions; last chance, last rights, and settlement agreements, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

The purpose of this system *to catalog, investigate, and appropriately and timely respond to administrative and union grievances and appeals filed by PBGC employees pursuant to PBGC's Administrative Grievance Procedure and the Collective Bargaining Agreement.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to OPM, the Merit Systems Protection Board, the Federal Labor Relations Authority, Office of Special Counsel, or the Equal Employment Opportunity Commission to carry out its authorized functions (under 5 U.S.C. 1103, 1204, 7105, and 42 U.S.C. 2000e-4, in that order).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders and/or in electronic form, including *computer databases,* magnetic tapes, *and* discs. *Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved* by employee name.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper *are* destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisor*(s),* representative*(s), and colleagues; PBGC General Counsel; and* other *individuals with relevant information.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

PBGC–9

SYSTEM NAME:

Unclaimed Pensions—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005 *and/or field benefit administrator, plan administrator, and paying agent worksites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; social security numbers; addresses; email addresses; telephone numbers; pension plans names; and pension plan numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; *29 U.S.C. 1203;* 44 U.S.C. 3101; *5 U.S.C. 310.*

PURPOSE(S):

This system of records is maintained to locate participants, alternate payees, and beneficiaries of pension plans covered by ERISA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 and G4 through G7, G9 through G11 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names and social security numbers of plan participants and beneficiaries may be disclosed to the Internal Revenue Service to obtain current addresses from tax return information and to the Social Security Administration to obtain current addresses. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

3. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

4. Names, social security numbers, last known addresses, and dates of birth and death may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the locating effort.

5. Names and addresses may be disclosed to licensees of the United States Postal Service ("USPS") to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The contract shall provide that the records disclosed by PBGC shall be used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.

6. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a pension plan to obtain the current addresses of individuals. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

7. Names and last known addresses of participants and beneficiaries, and the names and addresses of participants' former employers, may be disclosed to the public to obtain current addresses of the individuals. Such information will be disclosed to the public only if the PBGC is unable to make benefit payments to the participants and beneficiaries because the address it has does not appear to be current or correct.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained *in paper* and/or in electronic form, including *computer databases,* magnetic tapes, *and discs. Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved* by *any one or more of the following: name; social security number; customer identification number; date of birth; or date of death.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to unauthorized individuals.

Paper and electronic records that contain federal tax information are stored separately and are kept in locked file cabinets in areas of restricted access under procedures that meet IRS safeguarding standards.

Other paper and microfiche records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours. Electronic records *that do not contain federal tax information* are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Benefits Administration and Payments Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit

a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

PBGC–6; the SSA; the IRS; labor organization officials; firms or agencies providing locator services; USPS licensees; *field benefit administrator offices; and any other individual that provides PBGC with information regarding a missing participant, beneficiary, or alternate payee.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC—10

SYSTEM NAME:

Administrative Appeals File—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file administrative appeals with PBGC's Appeals Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and personal information *(*such as addresses, social security numbers, sex, dates of birth, dates of hire, salary, marital status (including domestic relations orders), and medical records*); employment and pension plan information (such as* name of pension plan, plan number, *dates* of commencement of plan participation or employment, statements regarding employment, dates of termination of plan participation or retirement, benefit payment data, pay status, calculations of benefit amounts, calculations of amounts subject to recoupment and/or recovery, *and* workman's compensation awards*);* Social Security Administration information, insurance claims and *awards; correspondence* and other information relating to appeals, and initial and final PBGC determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. ch. 18.; 29 CFR 4003.1(b); 29 CFR 4003.22; 29 CFR 4003.59.

PURPOSE(S):

The purpose of this system is to catalog, review, and respond to administrative appeals of: determinations that a plan is not covered under section 4021 of ERISA; determinations of benefit entitlements under section 4022(a) or (c) of ERISA; determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA or section 414(p) of the Internal Revenue Code; determinations of benefits payable under section 4022(b) or (c) or 4022B of ERISA; and determinations of the amount of liability under sections 4062(b)(1), 4063, or 4064 of ERISA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, and G4 through G12 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to third parties who may be aggrieved by the decision of the Appeals Board under 29 CFR 4003.57.

3. A record from this system of records may be disclosed, upon request, to an attorney representative or a non-attorney representative who has a power of attorney for the subject individuals, under 29 CFR 4003.6.

4. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, and trustees, to make benefit payments to plan participants, beneficiaries, and/or alternate payees.

5. A record from this system of records may be disclosed to third parties, such as contractors and expert witnesses, to obtain expert analysis of an issue necessary to resolve an appeal.

6. The name and social security number of a participant may be disclosed to an official of a labor organization recognized as the collective bargaining representative of the participant to obtain information relevant to the resolution of an appeal.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAIN AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are *retrieved by any one or more of the following:* participant, beneficiary, and/or alternate payee's name; plan name; appeal number; or extension request number.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's

security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of the Appeals Division, Office of the General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; the participant, beneficiary, or alternate payee; plan administrators, contributing sponsors (or other employer who maintained the plan), including any predecessor, successor, or member of the same controlled group; the labor organization recognized as the collective bargaining representative of a participant; the *Social Security Administration; and any* third party affected by the decision.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–11

SYSTEM NAME:

Call Detail Records—PBGC.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of PBGC telephones and PBGC-issued portable electronic devices to place calls *outside of PBGC* and receive calls *from outside of PBGC and* records indicating the assignment of telephone extension numbers and PBGC-issued portable electronic devices to PBGC employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101*; 5 U.S.C. 301.*

PURPOSE(S):

This system of records is used to review bills from telecommunication providers for telephone and cellular device usage by PBGC employees and *contractor employees.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, G3, G4, G5, *and* G7 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic form, including *computer databases,* magnetic tapes, and discs.

RETRIEVABILITY:

Records are retrieved by *one or more of the following:* name of employee or *contractor employee;* telephone extension number*;* PBGC-issued portable electronic device number*;* or telephone number called.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. *You must sign your request.*

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Telephone and PBGC-issued portable electronic device assignment records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–12

SYSTEM NAME:

Personnel Security Investigation Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

Records may also be kept at an additional location as backup for Continuity of Operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Applicants, employees, students, interns, volunteers, government contractors, experts, instructors, and consultants to Federal programs who undergo a personnel background investigation for the purpose of determining suitability for employment, contractor employee fitness, credentialing for HSPD 12, and/or access to PBGG facilities or information technology system.

This system also includes individuals accused of or found in violation of *PBGC's security rules and regulations.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; former names; *date and place of birth;* home address; *email address;* phone numbers; employment history; residential history; education and degrees earned; citizenship; *passport information; name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s),* names of associates and references and their contact information; names, *dates and places of birth, citizenship, and addresses* of relatives; names of relatives who work for the federal government; *information on foreign contacts and activities; association records; information on loyalty to the United States;* criminal history; mental health history; drug use; financial information; fingerprints; *information from the Internal Revenue Service pertaining to income tax returns;* credit reports; *information pertaining to security clearances; other agency reports furnished to PBGC in connection with the background investigation process;* summaries of *personal and third party interviews conducted during the background investigation;* results of suitability decisions; *and other information developed from above.*

Records pertaining to security violations may contain information pertaining to circumstances of the violation; witness statements; investigator's notes; and documentation of agency action taken in response to security violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 5 U.S.C. 3301; 44 U.S.C. 3101; Executive Order 10450; *Executive Order 13488;* 5 CFR 5.2; 5 CFR 731 and 736; OMB Circular No. A–130 Revised, Appendix III, 61 FR 6428; and Homeland Security Presidential Directive 12.

PURPOSE(S):

The records in this system of records are used to document and support decisions as to the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, and may include students, interns, or volunteers, to the extent their duties require access to federal facilities, information, systems, or applications.

The records may also be used to help streamline and make more efficient the investigations and adjudications processes generally.

The records may also be used to document security violations and supervisory actions taken *in response to such violations.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to an authorized source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, *to* inform the source of the nature and purpose of the investigation, or *to* identify the type of information requested.

3. A record from this system of records may be disclosed to OPM, the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission to carry out its *respective* authorized functions (under 5 U.S.C. 1103, 1204, and 7105, and 42 U.S.C. 2000e–4, in that order).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/*or* electronic form, including *computer databases,* magnetic tapes, and discs. *Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are retrieved by *any one or more of the following: name; social* security number*; unique case serial number; or other unique identifier of the individual about whom they are maintained.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Workplace Solutions Department,* PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Applications and other personnel and security forms, *including but not limited to a* SF–85, SF–85P, SF–86, SF–87 (via eQIP); personal interviews with *various* individuals*, including but not limited to* the subject of the investigation, *present and former* employers, references, neighbors, and *other* associates who may have information about the subject of the investigation; investigative records and notices of personnel actions furnished by other federal agencies; public records such as court filings*;* publications such as newspapers, magazines, and periodicals*;* tax records*;* educational institutions*;* police departments*;* credit bureaus*;* probation officials*;* prison officials*;* and *medical professionals.*

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

Pursuant to 5 U.S.C. 552a(k)(5), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

PBGC–13

SYSTEM NAME:

Debt Collection—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrator, plan administrator, and paying agent worksites.

Records may also be kept at an additional location as back up for Continuity of Operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any *individual* who may owe a debt to PBGC, including but not limited to: Pension plans and/or sponsors owing insurance premiums, interest, and penalties; employees and former employees of PBGC; individuals who are consultants and vendors to PBGC; participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and individuals who received payments to which they are not entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pension plan filings; names; addresses; social security numbers; taxpayer identification numbers; employee numbers; pay records; travel vouchers, and related documents filed by PBGC employees; invoices filed by consultants and vendors to PBGC; records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and other relevant records relating to *a* debt including the amount, status, and history of the debt, and the program under which the debt arose.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 31 U.S.C. 3711(*a*); 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

This system of records is maintained for the purpose of collecting debts owed to PBGC by various individuals, including, but not limited to, pension plans and/or sponsors owing insurance premiums, interest and penalties; PBGC employees and former employees; consultants and vendors; participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and individuals who received payments *from PBGC* to which they are not entitled. This system facilitates PBGC's compliance with the Debt Collection Improvement Act of 1996.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the United States Department of the Treasury for cross-servicing to effect debt collection in accordance with 31 U.S.C. 3711(e).

3. Names, addresses, and telephone numbers of employees, participants, and beneficiaries and information pertaining to debts owed by such individuals to the PBGC may be disclosed to a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

4. These records may be used to disclose information to any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

i. Request for repayment by telephone or in writing;

ii. Negotiation of voluntary repayment or compromise agreements;

iii. Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

iv. Referral of debts to private collection agencies, to Treasury designated debt collection centers, or for litigation;

v. Administrative and court-ordered wage garnishment;

vi. Debt sales;

vii. Publication of names and identities of delinquent debtors in the media or other appropriate places; and

viii. Any other debt collection method authorized by law;

b. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

c. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties; or,

d. For any other appropriate debt collection purpose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. *Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved* by any one or more of the following: Employer identification number; social security number; plan number; name of debtor, plan, plan sponsor, plan administrator, participant, alternate payee, or beneficiary.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC

records disposition schedule approved by NARA.

Records existing on paper *are destroyed beyond recognition.* Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; plan administrators; labor organization officials; debt collection agencies or firms; firms or agencies providing locator services; *field benefit administrator offices,* and other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–14

SYSTEM NAME:

My Plan Administration Account Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who use the My Plan Administration Account ("My PAA") application to make PBGC filings and payments electronically via the PBGC's Web site (*www.pbgc.gov),* including individuals acting for plan sponsors, plan administrators, and pension practitioners such as enrolled actuaries and other benefit professionals.

CATEGORIES OF RECORDS IN THE SYSTEM:

User's name; work telephone number; work email address; other contact information; a temporary PBGC-issued user ID and password; a user-selected user ID and password; a secret question/secret answer combination for authentication; for each pension plan for which the user intends to participate in making filings with the PBGC: The plan name; employer identification number (EIN); plan number (PN); the plan administrator's name, address, phone number, email address, *and* other contact information; and the role that the user will play in the filing process, e.g., creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to the PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1306, 1307, 1341, and 1343; 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

This system of records is maintained for use in verifying the identity of individuals who register to use the My PAA application to make PBGC filings, *and receiving, authenticating, processing, and keeping a history of filings and premium payments submitted to PBGC by registered users.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G4, G5, G6, G7, G9, G10, and G12 apply to this system of records (see Prefatory Statement of General Routine Uses).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic form, including computer databases, magnetic tapes and discs. *Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved by any one or more of the following:* Name; user ID; email address; telephone number; plan *name; EIN; or plan number.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to *ensure* that records are not disclosed to unauthorized individuals.

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the

National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Registered users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–15

SYSTEM NAME:

Emergency Notification Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and individuals who work for PBGC as contractors or as employees of contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; title; organizational component; employer; PBGC and personal telephone numbers; PBGC and personal email addresses; other contact information; user ID; a temporary PBGC-issued password; and a user-selected password.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; Executive Order 12656, 53 FR 47491 (1988); Presidential Decision Directive 67 (1998).

PURPOSE(S):

This system of records is maintained for notifying PBGC employees and individuals who work for PBGC as contractors or employees of contractors of PBGC's operating status in the event of an emergency, natural disaster or other event affecting PBGC operations; *and* for contacting employees or contractors who are out of the office on leave or after regular duty hours to obtain information necessary for official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G4, G5, G7, *and* G9 through G11 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record in this system of records may be disclosed to family members, emergency medical personnel, or to law enforcement officials in case of a medical or other emergency involving the subject individual (without the subsequent notification *prescribed* in 5 U.S.C. 552a(b)(8)).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained *in paper and electronic form, including magnetic tapes and discs. Records are also maintained on PBGC's network back-up tapes.*

RETRIEVABILITY:

Records are *retrieved by any one or more of the following:* Name; organizational component; or user ID and password.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to *ensure* that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in locked file cabinets in areas of restricted access. Electronic records are stored on computer networks and protected by assigning both network and system-specific usernames and passwords to individuals needing access to the records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Workplace Solutions Department,* PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURES:

An employee or contractor may access his or her record with a valid user-id and password via the electronic notification and messaging system through PBGC's intranet Web site, or by following the *Notification Procedures above.*

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–16

SYSTEM NAME:

People Search—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and contractors with PBGC network access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; photograph; personal description; skills; interests; schools; birthday; mobile phone number; home phone number; organizational component and title; supervisor's name; PBGC street address; room or workstation number; PBGC network ID; work email address; and work telephone number and extension.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; *5 U.S.C. 301.*

PURPOSE(S):

This system of records is used by PBGC employees and contractors to identify other PBGC employees and to access contact information for PBGC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in *an* electronic database. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by *any one or more of the following:* Name; username; organizational component; job title; work phone number; office number; supervisor; work email; skills; interests; birth date; education; peers; and employee type (federal or contractor).

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls *in accordance with PBGC's security program* to protect the security, integrity, and availability of information, and to *ensure* that records are not disclosed to or accessed *by unauthorized individuals.*

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Information Technology* Infrastructure Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals and PBGC personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–17

SYSTEM NAME:

Office of Inspector General Investigative File System—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, PBGC, 1200 K Street NW., Washington DC, 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals *named* in investigations conducted by OIG; complainants and subjects of complaints collected through the operation of the OIG Hotline; other individuals, including witnesses, sources, and members of the general public who are named individuals in connection with investigations conducted by OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information within this system relates to OIG investigations carried out under applicable statutes, regulations, policies, and procedures. The investigations may relate to criminal, civil, or administrative matters. These OIG files may contain investigative reports; copies of personnel, financial, contractual, and property management records maintained by PBGC; information submitted by or about pension plan sponsors or plan participants; background data including arrest records, statements of informants and witnesses, and laboratory reports of evidence analysis; search warrants, summonses and subpoenas; and other information related to investigations. Personal data in the system may consist of names, social security numbers, addresses, *dates of birth and death,* fingerprints, handwriting samples, reports of confidential informants, physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3; *5 U.S.C. App. 6.*

PURPOSE(S):

This system of records is used to *supervise and conduct audits and investigations relating to programs and operations of PBGC.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G2, G4, G5, G7, *and* G9 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings or after conviction may be disclosed to a federal, state, local, or foreign prison; probation, parole, or pardon authority; or any other agency or individual involved with the maintenance, transportation, or release of such a person.

3. A record relating to a case or matter may be disclosed to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings.

4. A record may be disclosed to any source, either private or governmental, when reasonably necessary to elicit information or obtain the cooperation of a witness or informant when conducting any official investigation or during a trial or hearing or when preparing for a trial or hearing.

5. A record relating to a case or matter may be disclosed to a foreign country, through the United States Department of State or directly to the representative of such country, under an international treaty, convention, or executive agreement; or to the extent necessary to assist such country in apprehending or returning a fugitive to a jurisdiction that seeks that individual's return.

6. A record originating exclusively within this system of records may be disclosed to other federal offices of inspectors general and councils comprising officials from other federal offices of inspectors general, as required by the Inspector General Act of 1978, as amended. The purpose is to ensure that OIG audit and investigative operations can be subject to integrity and efficiency peer reviews, and to permit other offices of inspectors general to investigate and report on allegations of misconduct by senior OIG officials as directed by a council, the President, or Congress. Records originating from any other PBGC systems of records, which may be duplicated in or incorporated into this system, also may be disclosed with all personally identifiable information redacted.

7. A record may be disclosed to the Department of the Treasury and the Department of Justice when the OIG seeks an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

8. A record may be disclosed to any governmental, professional or licensing authority when such record reflects on qualifications, either moral, educational or vocational, of an individual seeking to be licensed or to maintain a license.

9. A record may be disclosed to any direct or indirect recipient of federal funds, e.g., a contractor, where such record reflects problems with the personnel working for a recipient, and disclosure of the record is made to permit a recipient to take corrective action beneficial to the Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, discs, and an automated database.

RETRIEVABILITY:

Records *may be retrieved* by *any one or more of the following:* Name; social security number; subject category; or assigned case number.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records, computers, and computer-storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card-key systems, or other physical-access control methods. The use of computer systems is regulated with installed security software, computer-logon identifications, and operating-system controls including access controls, terminal and transaction logging, and file-management software.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper *are destroyed beyond recognition.* Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, PBGC, 1200 K Street NW., Washington, DC, 20005.

NOTIFICATION PROCEDURE:

This system is exempt from the notification requirements. However, consideration will be given to inquiries made in compliance with 29 CFR 4902.3.

RECORD ACCESS PROCEDURE:

This system is exempt from the access requirements. However, consideration will be given to requests made in compliance with 29 CFR 4902.3.

CONTESTING RECORD PROCEDURE:

This system is exempt from the notification requirements. However, consideration will be given requests made in compliance with 29 CFR 4902.3.

RECORD SOURCE CATEGORIES:

Subject individuals; individual complainants; witnesses; interviews conducted during investigations; federal, state and local government records; individual or company records; claim and payment files; employer medical records; insurance records; court records; articles from publications; financial data; bank information; telephone data; service providers; other law enforcement organizations; grantees and subgrantees; contractors and subcontractors; pension plan sponsors and participants; and other sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j) and (k), PBGC has established regulations at 29 CFR 4902.11 that exempt records in this system depending on their purpose.

PBGC—19

SYSTEM NAME:

Office of General Counsel Case Management System—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington DC, 20005.

Records may also be kept at an additional location as backup for Continuity of Operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants, beneficiaries, and alternate payees in pension plans covered by ERISA; pension plan sponsors, administrators, control group members and third parties, who are responsible for, manage, or have control over ERISA pension plans; other individuals who are identified in connection with investigations conducted pursuant to section 4003(a) *of ERISA* and/*or* litigation conducted with regard to ERISA pension plans; *individuals (including PBGC employees)* who are parties or witnesses in civil litigation or administrative proceedings involving or concerning the PBGC or its officers or employees; *individuals* who are the subject of a breach of personally identifiable information; *individuals* who are potential contractors or contractors with *PBGC or are otherwise personally associated with a contract or procurement matter; individuals* who receive *legal* advice from *the Office of General Counsel; and other individuals (including current, former, and potential PBGC employees, contract employees, interns, externs, and volunteers) who are the subject of or are otherwise connected to an inquiry, investigation, other matter handled by the Office of General Counsel.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Notes, reports, memoranda; settlements; agreements; correspondence; contracts; contract proposal and other procurement documents; plan documents; participant, alternate payee, and beneficiary files; initial and final PBGC determinations *of ERISA matters; Freedom of Information Act and the Privacy Act appeals and decisions of those appeals; drafts and legal reviews of proposed personnel actions; personnel records; litigation files; labor relations files;* information provided by labor unions or other organizations; witness statements; summonses and subpoenas, discovery requests and responses; and breach reports and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. Sections 1055, 1056(d)(3), 1302, 1303, 1310, 1321, 1322, 1322a, 1341, 1342, 1343 and 1350; 5 U.S.C. app. 105; 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

The purpose of *this system of records is to catalog, litigate, or otherwise resolve* any case or matter handled by *the following practice groups of* the Office of the General Counsel: *General Law and Ethics Group, General Law and Procurement Group, Litigation and Employment Law Group, Legal Technology & Administration Division, and ERISA Counseling Group.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

3. Names, addresses, and telephone numbers of employees, former employees, participants, and beneficiaries and information pertaining to debts to the PBGC may be disclosed to the Department of Treasury, the Department of Justice, a credit agency, and a debt collection firm to collect the debt. Disclosure to a debt collection firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act.

4. Information may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings.

5. Information may be provided to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

6. Information may be provided to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

7. Relevant and necessary information may be disclosed to a former employee of PBGC for the purposes of: (1) Responding to an official inquiry by federal, state, or local government entity or professional licensing authority; or, (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where PBGC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

8. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

9. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are indexed by assigned case number *and sequential record ID. Records are full-text indexed and thus can be retrieved by any free-form key, which may include names or other personal identifiers.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours.

Electronic records are stored on computer networks and protected by assigning unique user identification numbers to individuals who are authorized to access the records, and by passwords set by these users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; pension plan participants, sponsors, administrators *and* third-parties; federal government records; *current* and former employees, contractors, *interns, and externs; PBGC* claim and payment files; insurers; the Social Security Administration; labor organizations; court records; articles from publications; *and other individuals, organizations, and*

corporate entities with relevant knowledge/information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

PBGC–21

SYSTEM NAME:

Reasonable Accommodation Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former employees of the PBGC who request *and/*or receive a reasonable accommodation for a disability; *and* authorized individuals or representatives (e.g., family members, union representatives, or attorneys) who file *a* request for *a* reasonable accommodation on behalf of a *prospective, current, or former employee.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and employment information of employee needing an accommodation; requester's name and contact information (if different that the employee who needs an accommodation); date request was initiated; information concerning the nature of the disability and the need for accommodation, including appropriate medical documentation; details of the accommodation request, such as: type of accommodation requested, how the requested accommodation would assist in job performance, the sources of technical assistance consulted in trying to identify alternative reasonable accommodation, any additional information provided by the requester relating to the processing of the request, and whether the request was approved or denied, and whether the accommodation was approved for a trial period; notification(s) to the employee and his/her supervisor(s) regarding the accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. 701 et seq.; 42 U.S.C. 12101 et seq.; Executive Order 13164 (July 28, 2000); and Executive Order 13548 (July 10, 2010).

PURPOSE(S):

The purposes of this system *are: (1)* To allow PBGC to collect and maintain records on prospective, current, and former employees with disabilities who requested or received reasonable accommodation by PBGC; *(2)* to track and report the processing of requests for reasonable accommodation PBGC-wide to comply with applicable law and regulations; and *(3)* to preserve and maintain the confidentiality of medical information submitted by or on behalf of applicants or employees requesting reasonable accommodation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to physicians or other medical professionals to provide them with or obtain from them the necessary medical documentation and/or certification for reasonable accommodation.

3. A record from this system of records may be disclosed to another federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation issues.

4. A record from this system of records may be disclosed to the Office of Management and Budget (OMB), Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or Office of Special Counsel (OSC) to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

5. A record from this system of records may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.

6. A record from this system of records may be disclosed to the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained *in paper and in electronic form,* including computer databases, magnetic tapes, or discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved *by any one or more of the following:* Employee name *or assigned case number.*

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Only authorized personnel may be given access to either the secured area or the locked file cabinet.

Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Reasonable Accommodation Coordinator, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; individual making the request (if different than the subject individuals); medical professionals; and the subject individuals' supervisor(s).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC–22

SYSTEM NAME:

Telework and Alternative Worksite Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former employees of the PBGC who have been granted or denied authorization to participate in PBGC's Telework Program to work at an alternative worksite apart from their official PBGC duty station.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position title, grade, job series, and department name; official PBGC duty station address and telephone number; alternative worksite address and telephone number(s); date telework agreement received and approved/denied; telework request and approval form; telework agreement, self-certification home safety checklist, and supervisor-employee checklist; type of telework requested (e.g., episodic or regular); regular work schedule; telework schedule; approvals/disapprovals; description and list of government-owned equipment and software provided to the teleworker; mass transit benefits received through PBGC's mass transit subsidy program; parking subsidies received through PBGC's subsidized parking program; and any other miscellaneous documents supporting telework.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. 6120; 29 U.S.C. 701 et seq.

PURPOSE(S):

The purpose of this system of records it to collect and maintain records on prospective, current, and former employees *who have participated in, presently participate in, or have sought to participate in* PBGC's Telework Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to medical professionals to obtain information about an employee's medical background necessary to grant or deny approval of medical telework.

3. A record from this system may be disclosed to federal, state, or local governments during actual emergencies, exercises, or continuity of operations tests for the purposes of emergency preparedness and responding to emergency situations.

4. A record from this system may be disclosed to the Department of Labor when an employee is injured when working at home while in the performance of normal duties.

5. A record from this system may be disclosed to the Office of Personnel Management (OPM) for use in its Telework Survey to provide consolidated data on participation in PBGC's Telework Program.

6. A record from this system of records may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

Also, each of PBGC's departments has a Telework Liaison who maintains copies of the records pertaining to employees working in his or her department.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: employee name; and the department in which the

employee works, will work, or previously worked.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Only authorized personnel may be given access to either the secured area or the locked file cabinet.

Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Telework Managing Officer, Workplace Solutions Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PBGC—23

SYSTEM NAME:

Internal Investigations of Allegations of Harassing Conduct—PBGC

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former PBGC employees, contractors, and interns who have filed a complaint or report of harassment, or have been accused of harassing conduct, as described in PBGC's Policy to Prevent Harassing Conduct in the Workplace.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to a complaint or report of harassment, which may include the name, position, grade, and supervisor(s) of the complainant and the accused; the complaint; statements of witnesses; reports of interviews; final decisions and corrective actions taken; and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 42 U.S.C. 2000e et seq.

PURPOSE:

This system of records is maintained for the purpose of upholding PBGC's Policy to Prevent Harassing Conduct in the Workplace and eradicating harassment in the workplace, including conducting and resolving internal investigations of allegations of harassment brought by or against PBGC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G13 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Disclosure of information from this system of records regarding the status of any investigation that may have been conducted may be made to the complaining party and to the alleged harasser when the purpose of the disclosure is both relevant and necessary and is compatible with the purpose for which the information was collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; department; or unique identifier assigned to each incident reported.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGERS AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals; supervisors and other PBGC employees with knowledge; agency EEO specialists; management officials; employee relations staff; PBGC attorneys; outside counsel retained by subject individuals; and medical professionals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

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FEDERAL REGISTER

Vol. 79 Tuesday,
No. 174 September 9, 2014

Part IV

The President

Federal Register
Vol. 79, No. 174
Tuesday, September 9, 2014

Presidential Documents

Title 3—

The President

Proclamation 9162 of September 4, 2014

National Days of Prayer and Remembrance, 2014

By the President of the United States of America

A Proclamation

In the footprints of two mighty towers, at a hallowed field where heroic actions saved even more heartbreak and destruction, and outside a Pentagon wall where we have rebuilt but still remember—in these sacred sites and in quiet corners across our country, we join together this week to remember the tragedy of thirteen Septembers ago. We stand with those who grieve as we offer some measure of comfort once more. We honor the courage and selflessness of all who responded. We reflect on the strength and grace that lift us up from the depths of our despair. Above all, we reaffirm the true spirit of 9/11—love, compassion, and sacrifice—and we enshrine it forever in the heart of our Nation.

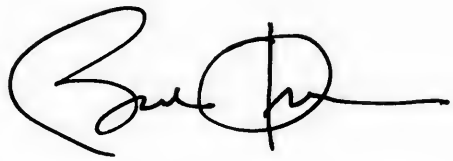
No matter how many years pass, we will never forget the innocent souls stolen on that dark day: parents, children, siblings, and spouses of every race and creed. Dusty helmets, polished badges, and soot-stained gloves serve as small symbols of those who gave everything so others might live. But the stories of all those lost and the beauty of their lives shine on in those they left behind. The sacrifice of so many has forever shaped our Nation, and we have emerged a stronger, more resilient America. We stand tall and unafraid, because no act of terror can match the character of our Union or change who we are.

Each year as our Nation mourns, our faith restores us and summons within us the sense of common purpose we rediscovered after the attacks. Prayer and humble reflection carry us forward on the path we travel together, helping mend deep wounds still sore from loss. These lasting virtues sustain us not just for one day, but every day.

On this solemn anniversary, let us reaffirm the fundamental American values of freedom and tolerance—values that stand in stark contrast to the nihilism of those who attacked us. Let us give thanks for all the men and women in uniform who defend these values from new threats, and let us remember those who laid down their lives for our country. May our faith reveal that even the darkest night gives way to a brighter dawn.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, September 5 through Sunday, September 7, 2014, as National Days of Prayer and Remembrance. I ask that the people of the United States honor and remember the victims of September 11, 2001, and their loved ones through prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, evening candlelight remembrance vigils, and other appropriate ceremonies and activities. I invite people around the world to participate in this commemoration.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.



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