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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1115; Directorate Identifier 2010–NM–221–AD; Amendment 39–17111; AD 2012–13–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by several reports of electrical arcs at terminal ''A'' of the electrically heated flight deck window 1. This AD requires repetitive inspections for damage of the electrical connections at terminal ''A'' of the left and right flight deck window 1, and corrective actions if necessary. This AD also allows for replacing a flight deck window 1 with a new improved flight deck window 1 equipped with different electrical connections, which would terminate the repetitive inspections for that window. We are issuing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flight crew.

DATES: This AD is effective August 16, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 16, 2012.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *elias.natsiopoulos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 19, 2010 (75 FR 70868). That NPRM proposed to require repetitive inspections for damage of the electrical terminal at the left and right flightdeck window 1, and corrective actions if necessary. That NPRM also proposed to allow for replacing the flight deck window 1 with a new improved flight deck window 1 equipped with different electrical connections, which would terminate the repetitive inspections for that flight deck window.

Revised Service Information

The NPRM (75 FR 70868, November 19, 2010) referred to Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, as the appropriate source of service information for the proposed actions. Boeing has since revised this service information to account for certain inconsistencies and omissions. Some of these discrepancies were reported by operators, who commented on these inconsistencies and omissions as noted below. We have reviewed Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, which addresses the following commenters' concerns:

- It extends the repetitive inspection intervals for the GKN windshields to 12,000 flight hours or 48 months, whichever occurs later, and provides more details for the conditions to look for during the investigation and corrective actions.
- It changes the inspection specified in Work Packages 1 and 2 to a detailed inspection (the type of inspection had not been specified).
- It revises Figures 1 and 2 to provide a better illustration of the electrical connections, change certain data, and add new data to the footnotes. Among other things, the new data clarifies the conditions to look for when inspecting the connectors, clarifies the associated corrective actions including replacing a connector if it or its cover has melted; specifies inspection and corrective actions of cross-threaded screws, and provides instructions on how to select the correct screw for the opted windshield.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (75 FR 70868, November 19, 2010) and the FAA's response to each comment.

Support for the NPRM (75 FR 70868, November 19, 2010)

Air Line Pilots Association, International (ALPA), supported the intent of the NPRM (75 FR 70868, November 19, 2010).

Request To Correct Service Information Discrepancies

United Airlines (UAL) reported a number of errors and inconsistencies in

the information and procedures specified in Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010 (the source of service information for the NPRM (75 FR 70868, November 19, 2010)).

As explained above, we reviewed Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, which addresses the discrepancies noted by UAL. We have revised this final rule to refer to Revision 3 of that service bulletin. We also removed paragraph (j) of the NPRM (75 FR 70868, November 19, 2010) (that paragraph had explained an exception to the proposed service information), and we re-identified subsequent paragraphs accordingly. We have, however, retained paragraph (i) in this final rule to ensure that operators are aware of the conditions that require window replacement and the compliance time for the replacement. We revised the NPRM to add credit for actions accomplished before the effective date of this AD using Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010.

Request To Extend Initial Compliance Time

UAL questioned the validity of the initial 500-flight-hour compliance time for the inspection, and requested that this compliance time be extended to mitigate the risk of operational interruptions. Based on the length of time Boeing and the FAA have been aware of the issue, UAL felt that increasing this time would have no adverse effect on flight safety.

We disagree to extend the compliance time. Most of the reported arcing events occurred within 500 flight hours after incorrect assembly of a screw/connector electrical connection during maintenance. We have not changed this compliance time in the final rule.

Request To Exclude Certain GKN Windshields

GKN Aerospace (GKN) requested that we revise the NPRM (75 FR 70868, November 19, 2010) to exclude its windshield part numbers 60B10028–17 and 60B10028–18 (GKN part numbers 06372 and 06373) from the proposed inspections. As an alternative, GKN requested that those part numbers be given longer compliance times because of the superior design of the terminal block connections at both the cockpit and windshield sides of the terminal block. GKN pointed out that the primary cause of arcing that leads to high temperatures is the melting of the solder joint used in the window side of the terminal block used by other manufacturers. The GKN-designed and -manufactured windshields do not use a soldered joint to connect the power braid to the back of the terminal block. Instead, the GKN windshield employs a ring tag crimped to a carrier wire, which is attached to the terminal insert by a screw and secured against vibration by a lock washer. The carrier wire is mechanically crimped to the braid wire from the windshield. The mechanical fixing of the power braid to the terminal block at the windshield side is superior to the soldered joint used in the standard alternative windshields. GKN also pointed out that material choices can reduce the potential for cross threading. GKN uses nickel-plated bronze terminal inserts, which are aligned with industry-accepted standards for electrical terminations that pass high power and high currents. Bronze is also more resistive to cross threading than other softer materials used in electrical connections by other manufacturers.

We agree to extend the repetitive inspection interval of GKN-manufactured windshields with screw/connector electrical heat terminals because the material used in the GKN 747 windshield terminal block has significantly better high-temperature capability and behaves significantly better than PPG's epoxy terminal blocks, and the internal crimped connection prevents the sustained arcing that can occur with PPG's internal soldered connections. We have revised paragraph (g) in this final rule to extend the repetitive inspection intervals for GKN windshields with screw/connector electrical connections to 12,000 flight hours or 48 months, whichever occurs later.

We disagree, however, to exclude those part numbers from the required inspections. Two of five reported Model 747 windshield arcing events occurred on these GKN windshields. The GKN windshields using screw/connector type electrical terminal connections are therefore susceptible to overheat caused by a loose screw or an incorrectly assembled terminal. An overheated terminal could damage adjacent parts and become an ignition source for combustible material close to the overheated terminal. The GKN windshields with screw/connector-type electrical terminal connections therefore are not excluded from the required actions of the AD.

Request To Clarify Note (d) of Figures 1 and 2

UAL noted that STEP 2, Note (d), of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, considers some movement (1–3 degrees) of a tight connection to be a normal condition. UAL stated that it is not possible to distinguish between 3 degrees and, for example, 4 degrees, and requested that we clarify this condition.

We agree to provide the requested clarification. According to Boeing, the referenced Note (d) was added in STEP 2, Figures 1 and 2, of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010 (which corresponds to Note (e) in Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011), in response to multiple inquiries from airlines regarding the brass terminal insert in the PPG windshield terminals. The airlines were concerned about the lack of information regarding the slight movement of the connector with light manual pressure while the terminal connection is tight (tight screw and not crossthreaded). This Note was added to describe the small movement—''approximately 1–3 degrees''—of the shipside of the connector with light manual pressure as being normal and not to be perceived as a loose terminal connection. The 1- to 3-degree movement is an approximation and does not require measurement. We have determined that this Note is sufficient as written and provides the information requested by the airlines. We have not changed the final rule regarding this issue.

Requests To Allow GKN Windshields as Terminating Action for AD

UAL requested we revise paragraph (k) of the NPRM (75 FR 70868, November 19, 2010) (paragraph (j) in this final rule) to consider installation of GKN screw-connector-type windshields as terminating action in the NPRM. As an alternative, UAL requested that use of GKN windshields with pin and socket arrangement part numbers 60B10028–21 and -22 be considered as terminating action. UAL also noted that the primary cause of the electrical arcs is damaged solder joints. UAL pointed out that the PPG windshield heat terminal contains an internal solder joint, but the GKN windshield heat terminal does not. The GKN windshields do not incorporate the design features that cause extreme arcing, but use mechanical fasteners instead of solder in their terminal internal joints.

We partially agree with the request. We agree that damaged solder joints are the primary cause for the electrical arcs, because the heat caused by a loose terminal exceeds the rated melting point of the solder, resulting in high voltage

arcing that may damage the windshield glass. We also agree that the failure rate of GKN windshields seems to be substantially lower than that of the PPG windshields, and the severity of the failure conditions of the GKN windshields is less than those of the PPG windshields. For these reasons, we agree to extend the repetitive inspection intervals for the GKN windshields. As explained previously, we have revised the compliance times for these windshields in paragraph (g) in this final rule.

We disagree, however, to consider installation of GKN windshields with screw/connector-type heat terminals as terminating action. The primary cause of an overheated terminal is a loose connection of the screw due to incorrect torquing during the installation of the screw or incorrect installation of the screw. A loose connection increases the heat at the terminal, which causes damage to the adjacent parts and may become an ignition source for any combustible material close to the heated terminal. A loose or incorrectly installed screw is the result of limited access on the airplane. The pin-socket connector is assembled in a controlled environment on a bench. Installation with full access is not subject to the same assembly errors as the screw/connector terminal, and the robust pin/socket connection can be verified by test during the assembly of the terminal. The screw/connector design proposed by the commenter therefore does not provide an acceptable level of safety as a terminating action.

We also disagree to allow GKN windshields with pin and socket arrangement part numbers 60B10028–21 and –22 as terminating action because those part numbers are not specified in Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, and the adequacy of those parts is unknown. Under the provisions of paragraph (l) of the final rule, however, we will consider requests to exclude from the inspection pin/socket windshield part numbers not specified in that service bulletin if sufficient data are submitted to substantiate that those part numbers would provide an acceptable level of safety.

Request To Clarify Repetitive Interval

Paragraph (h) of the NPRM (75 FR 70868, November 19, 2010) specified that a windshield replaced for failing an inspection must be re-inspected within 500 flight hours after replacement. UAL asked whether this repetitive inspection requirement applied to any replaced windshield—regardless of the reason for the replacement—and questioned why the re-inspection would be required only when a windshield fails an inspection.

We agree to provide clarification. It is not necessary to revise the AD to require inspection every time a windshield is replaced for any other cause than failure of the inspection required by the AD because, under those conditions, subsequent inspections are done as specified in the airplane maintenance manual. We have not changed the final rule regarding this issue.

Request To Clarify Intent of AD

ALPA suggested that we clarify the intent of the NPRM (75 FR 70868, November 19, 2010) by explaining that an investigation showed that the electrical arcs are caused by loose terminal ''A'' connections.

We agree with the request and have revised paragraphs (e) and (g) of this final rule to add a reference to ''terminal 'A' connections.''

Explanation of Compliance Time

While Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, includes a compliance time of 500 flight hours or 150 days, whichever occurs first, for the detailed inspection specified in paragraphs (g), (h) and (i) of this AD, we have determined that a compliance time of 500 flight hours, as specified in the NPRM (75 FR 70868, November 19, 2010), represents an appropriate interval of time in which the required actions can be performed and still maintain an adequate level of safety.

Window Heat Power Connection Disassembled and Reassembled

If a window heat power connection, on a windshield that uses a screw and connector for window heat power connection, is disassembled and reassembled, Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, specifies a detailed inspection and corrective actions within 150 days or 500 flight hours, whichever occurs first, after reassembly of the windshield heat power connection. This action was not included in Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, or in the NPRM. Adding this action to the AD actions at this time would expand the scope of the NPRM and necessitate issuing a supplemental NPRM to give the public the opportunity to comment on the added actions. We do not wish to further delay this action but may consider further rulemaking in the future to require these actions.

Explanation of Additional Changes to NPRM (75 FR 70868, November 19, 2010)

We have clarified the replacement conditions for paragraph (i)(2) of the NPRM (75 FR 70868, November 19, 2010). That paragraph specified a 500-flight-hour compliance time for window replacement if the connector is ''tight.'' We have extended this condition to connectors that are ''tight or can be tightened by applying the correct torque.''

References to ''screw/lug'' have been changed to ''screw/connector'' in this final rule to agree with the terminology used in Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the 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 (75 FR 70868, November 19, 2010) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (75 FR 70868, November 19, 2010).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 251 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
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	None	$85 per inspection cycle.	$21,335 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of windshield	Up to 18 work-hours × $85 per hour = $1,530	Up to $47,592	Up to $49,122.

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):

2012–13–09 The Boeing Company: Amendment 39–17111; Docket No. FAA–2010–1115; Directorate Identifier 2010–NM–221–AD.

(a) Effective Date

This AD is effective August 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30: Ice and rain protection.

(e) Unsafe Condition

This AD was prompted by several reports of electrical arcs at the terminal ''A'' connections of the electrically heated flight deck window 1. We are issuing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

(f) Compliance

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

(g) Detailed Inspection and Corrective Actions

Within 500 flight hours after the effective date of this AD, do a detailed inspection for damage (including but not limited to a cross-threaded screw, arcing, loose terminal, and heat damage) of the electrical terminal ''A'' block, connector, and wiring of the left and right flightdeck window 1, and do all applicable corrective actions, by accomplishing the actions specified in Work Packages 1 and 2 of the Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011. Except as provided by paragraph (i) of this AD, do all applicable corrective actions before further flight. Except as required by paragraph (h) of this AD, repeat the detailed inspection thereafter at the applicable intervals specified in paragraph (g)(1) or (g)(2) of this AD. Doing the replacement specified in paragraph (j) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window 1.

(1) For flightdeck window 1 manufactured by GKN with screw/connector electrical connections: Repeat the detailed inspection at intervals not to exceed 12,000 flight hours or 48 months, whichever occurs later.

(2) For flightdeck window 1 manufactured by PPG with screw/connector electrical connections: Repeat the detailed inspection at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later.

(h) Inspection for Replaced Windshield

For any window 1 that is replaced with a window 1 that uses screw and connector for the electrical heat connection in accordance with Work Package 1 or 2 of the Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011: Within 500 flight hours after the corrective action, do a detailed inspection, in accordance with Work Package 1 or 2, as applicable, of the

Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, and repeat the detailed inspection thereafter at the applicable intervals specified in paragraph (g)(1) or (g)(2) of this AD. Doing the replacement specified in paragraph (j) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window 1.

(i) Window 1 Conditional Replacement

If, during the inspection required by paragraph (g) or (h) of this AD, a screw is found crossthreaded, do the applicable corrective actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) If the connector is loose and cannot be tightened by applying the correct torque, before further flight, replace that window 1 in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011.

(2) If the connector is tight or can be tightened by applying the correct torque, replace that window 1 within 500 flight hours after the inspection, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011.

(j) Optional Terminating Action

Replacing a flightdeck window 1 that uses screw and connector for the electrical heat connection with a flightdeck window 1 that uses pin and socket for the electrical connection, in accordance with Work Package 3 or 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011, ends the repetitive inspection requirements of this AD for that window 1 only.

(k) Credit for Previous Actions

This paragraph provides credit for the inspections and corrective actions required by this AD, and for the window replacement specified in paragraph (j) of this AD for the replaced window 1 only, if the corresponding actions were performed before the effective date of this AD using the service information identified in paragraph (k)(1), (k)(2), or (k)(3) of this AD.

(1) Boeing Special Attention Service Bulletin 747–30–2081, dated August 8, 2006.

(2) Boeing Special Attention Service Bulletin 747–30–2081, Revision 1, dated August 20, 2008.

(3) Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010.

(l) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(m) Related Information

For more information about this AD, contact Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 747–30–2081, Revision 3, dated December 5, 2011.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

(5) You may also review copies of the 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 June 27, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–16333 Filed 7–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0104; Directorate Identifier 2011–NM–279–AD; Amendment 39–17107; AD 2012–13–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes. This AD was prompted by a report indicating that a fire originated near the first officer's area, which caused extensive damage to the flight deck. This AD requires replacing the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses in the flight compartment. We are issuing this AD to prevent electrical current from passing through the low-pressure oxygen hose internal anti-collapse spring, which can cause the low-pressure oxygen hose to melt or burn, and a consequent oxygen-fed fire in the flight compartment.

DATES: This AD is effective August 16, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 16, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98057–3356. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on February 8, 2012 (77 FR 6518). That NPRM proposed to require replacing the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses in the flight compartment.

Relevant Service Information

Since we issued the NPRM (77 FR 6518, February 8, 2012), Boeing has issued Alert Service Bulletin 777–35A0027, Revision 1, dated April 19, 2012. This service information was issued to remove airplanes from the effectivity that have had certain changes incorporated in production, update warranty information, and material price information. No additional work is necessary for airplanes changed in accordance with Boeing Alert Service Bulletin 777–35A0027, dated December 15, 2011. We have changed the final rule to reference Boeing Alert Service Bulletin 777–35A0027, Revision 1, dated April 19, 2012. Additionally, we have updated the Costs of Compliance section of the final rule regarding the parts cost and warranty information.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 6518, February 8, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 6518, February 8, 2012)

The Air Line Pilots Association (ALPA) stated it supports the NPRM (77 FR 6518, February 8, 2012).

Request To Shorten Compliance Time

The ALPA requested we shorten the compliance time for the replacement of the oxygen hoses from 18 months to 12 months. The commenter based this request on the impact that an oxygen fed fire on the flight deck would have on flight safety.

We disagree. In developing the proposed compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of replacement of the oxygen hoses. Further, the proposed compliance time is in keeping with the manufacturers' recommended compliance time. In consideration of all these factors, operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed the AD in this regard.

Request To Increase Compliance Time

United Airlines requested we increase the compliance time for the replacement of the oxygen hoses from 18 months to 24 months. The commenter stated that based on parts availability and its normal maintenance schedule, it believes that 24 months would be an appropriate interval for the timely accomplishment of the actions while maintaining an adequate level of safety.

We disagree with increasing the compliance time. As stated previously, in developing the proposed compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for a timely accomplishment of replacement of the oxygen hoses. Further, the proposed compliance time is in keeping with the manufacturers' recommended compliance time. However, under the provisions of paragraph (i) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Add Applicability Language

Boeing requested that we add language to paragraph (h) of the NPRM (77 FR 6518, February 8, 2012), stating that this paragraph applies only to any airplane ''affected by this AD.''

We do not agree with the commenter's request. The applicability statement in all AD actions lists all airplanes affected by that AD. All of the requirements stated in an AD are applicable only to the airplanes listed in the applicability. We find no justification for making the requested change. We have not changed the AD in this regard.

Request for Clarification of Parts Installation Requirement

American Airlines (American) requested clarification of the requirement in paragraph (h) of the NPRM (77 FR 6518, February 8, 2012) that prohibits installing certain oxygen hoses after the effective date of the AD. American stated that the compliance time of paragraph (h) of the NPRM is prior to the compliance date of the low-pressure oxygen hose removal, and if a maintenance procedure is accomplished which would require the removal of the low-pressure oxygen hose, the same low-pressure oxygen hose cannot be re-installed.

We agree to clarify the requirement. Once we have determined that an unsafe condition exists, we generally specify not to allow that condition to be introduced into the fleet. Although the word ''install'' is generally considered to be broader than the word ''replace,'' for this AD operators can interpret it as meaning ''replace'' while remaining within the intent of the ''Parts Installation'' paragraph (paragraph (h) of this AD). By simply reinstalling a part removed during maintenance, the operator is not ''installing'' a different part. Therefore, removing a part to gain access and then reinstalling that same part for other maintenance activities not associated with the AD is acceptable. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 169 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
Replacement	18 work-hours × $85 per hour = $1,530	$1,066	$2,596	$438,724

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

Authority for This Rulemaking

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

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

Regulatory Findings

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):

2012–13–05 The Boeing Company: Amendment 39–17107; Docket No. FAA–2012–0104; Directorate Identifier 2011–NM–279–AD.

(a) Effective Date

This AD is effective August 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 777–35A0027, Revision 1, dated April 19, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report indicating that a fire originated near the first officer's area, which caused extensive damage to the flight deck. We are issuing this AD to prevent electrical current from passing through the low-pressure oxygen hose internal anti-collapse spring, which can cause the low-pressure oxygen hose to melt or burn, and a consequent oxygen-fed fire in the flight compartment.

(f) Compliance

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

(g) Replacement

Within 18 months after the effective date of this AD: Replace the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–35A0027, dated December 15, 2011, or Boeing Alert Service Bulletin 777–35A0027, Revision 1, dated April 19, 2012.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install in the airplane flight compartment oxygen system on any airplane, a low-pressure oxygen hose having part number 57034–81220, 57034–81320, or 57034–91100.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6457; fax: (425) 917–6590; email: *susan.l.monroe@faa.gov.*

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Boeing Alert Service Bulletin 777–35A0027, dated December 15, 2011.

(ii) Boeing Alert Service Bulletin 777–35A0027, Revision 1, dated April 19, 2012.

(2) For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98057–3356. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the 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 June 21, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15893 Filed 7–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9590]

RIN 1545–BJ82

Health Insurance Premium Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9590) that were published in the **Federal Register** on Wednesday, May 23, 2012 (77 FR 30377). The final regulations relate to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010.

DATES: This correction is effective on July 12, 2012 and is applicable May 23, 2012.

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz, (202) 622–4920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 36B of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9590) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.36B–3(g)(3) is amended by revising the first sentence of *Example 1* to read as follows:

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(g) * * *

(3) * * *

Example 1. A's household income is 275 percent of the Federal Poverty line for A's family size for that taxable year. * * *

* * * * *

■ **Par. 3.** Section 1.36B–4(b)(6) is amended by revising the first sentence of *Example 5.* (ii) to read as follows:

§ 1.36B–4 Reconciling the premium tax credit with advance credit payments.

* * * * *

(b) * * *

(6) * * *

Example 5 * * *

(ii) Because R's and S's premium tax credit of $3,484 exceeds their advance credit payments of $2,707, R and S are allowed an additional credit of $777. * * *

* * * * *

Diane Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–16986 Filed 7–11–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9590]

RIN 1545–BJ82

Health Insurance Premium Tax Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9590) that were published in the **Federal Register** on Wednesday, May 23, 2012 (77 FR 30377). The final regulations relate to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010.

DATES: This correction is effective on July 12, 2012 and is applicable May 23, 2012.

FOR FURTHER INFORMATION CONTACT: Shareen S. Pflanz, (202) 622–4920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9590) that are the subject of this correction are under section 36B of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9590) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9590), that are the subject of FR Doc. 2012–12421, are corrected as follows:

1. On page 30377, column 2, in the preamble, under the paragraph heading ''Paperwork Reduction Act'', first paragraph of the column, line 5, the language ''with the Paperwork and Reduction Act'' is corrected to read ''with the Paperwork Reduction Act''.

2. On page 30378, column 2, in the preamble, under the paragraph heading ''e. Federal Poverty Line'', line 2 of the paragraph, the language ''*federal poverty line* by reference to the'' is corrected to read ''*Federal poverty line* by reference to the''.

3. On page 30381, column 3, under the paragraph heading ''E. Individuals Enrolled in Coverage'', first full paragraph of the column, lines 6 and 7, the language ''a plan year or other period if (1) the employee or related individual is'' is corrected to read ''a plan year or other period if the employee or related individual (1) is''.

Diane Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–16985 Filed 7–11–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0537]

RIN 1625–AA00

Safety Zone; Hudson Valley Triathlon, Ulster Landing, Hudson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Ulster Landing, NY for the 16th Annual Hudson Valley Triathlon swim event. This temporary safety zone is necessary to protect swimmers, spectators, and vessels from the hazards associated with swimmers competing in a confined area of the

Hudson River. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port (COTP) New York or the designated representative.

DATES: This rule is effective from 7:30 a.m. until 8:30 a.m. on July 15, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0537]. 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 Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, 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
COTP Captain of the Port
CFR Code of Federal Regulations

A. Regulatory History and Information

The Hudson Valley Triathlon swim is an annual recurring event that has a permanent safety zone found at 33 CFR 165.160. The effective date for the permanent safety zone is the first weekend after the 4th of July each year. On July 20, 2011, a temporary final rule was published in the **Federal Register** (76 FR 139) for this event.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying this event would be contrary to the public interest.

The 16th Annual Hudson Valley Triathlon swim event will occur on July 15, 2012. On May 22, 2012, the sponsor of the event advised the Coast Guard that due to optimal tide, current, and weather conditions needed to promote the safety of the swim participants, they were changing the date of the event from the first weekend after the 4th of July to Sunday, July 15, 2012, thereby rendering the permanent safety zone set forth in 33 CFR 165.160 inapplicable for this year's event.

Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the safety of life on the navigable waters from the hazards of swimming in the Hudson River, particularly in the vicinity of the shipping channel. The safety zone is necessary to provide for the safety of event participants, spectator crafts, and other vessels operating near the event area. For the safety concerns noted, it is in the public interest to have this regulation in effect during this event. In addition, any change to the date of the event could potentially cause economic hardship on the marine event sponsor and negatively impact other activities being held in conjunction with these events by potentially causing numerous event participant cancellations.

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

B. Basis and Purpose

The legal basis for the proposed rule is 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

The Coast Guard received an application to hold the annual Hudson River Triathlon on the waters of the Hudson River, Ulster Landing, NY, in the vicinity of Barrytown, NY. With this application, the event sponsor requested that the event be permitted to take place on Sunday, July 15, 2012 rather than the usual first weekend following July 4th. The deviation from the permanent regulation was requested to avoid unsafe tide and current conditions expected to occur on the Sunday after July 4, 2012.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the waters of the Hudson River in the vicinity of Ulster Landing, NY for the 16th Annual Hudson Valley Triathlon swim event. This temporary rule will restrict vessels from a portion of the Hudson River during the swim event on Sunday, July 15, 2012.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons. Vessels will only be restricted from the safety zone for a short duration of time. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners. Additionally, the Coast Guard promulgated a permanent safety zone found in 33 CFR part 165 for the event area in the past and no adverse comments or notice of any negative impact caused by the safety zone were received.

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.

(1) This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit

or anchor in a portion of the Hudson River during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be enforced for only 1 hour early in the day when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before activating the zone, we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

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 INTFORMATION 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

Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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 AREA

■ 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.T01–0537 to read as follows:

§ 165.T01–0537 Safety Zone; Hudson Valley Triathlon, Ulster Landing, Hudson River, NY.

(a) *Regulated Area.* The following area is a regulated area: All navigable waters of the Hudson River, Ulster Landing, NY in the vicinity of Barrytown, NY bound by the following points: 42°00′03.7″ N 073°56′43.1″ W; thence to 41°59′52.5″ N 073°56′34.2″ W; thence to 42°00′15.1″ N 073°56′25.2″ W; thence to 42°00′05.4″ N 073°56′41.9″ W; thence along the shoreline to the point of the beginning. This area is approximately 1.2 nautical

miles north of the Kingston Rhinecliff Bridge.

(b) *Effective Date.* This rule is effective from 7:30 a.m. until 8:30 a.m. on July 15, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for event coordinators and support vessels, will be allowed to transit the safety zone without the permission of the COTP. Vessels not associated with the event that are permitted to enter the regulated areas shall maintain a separation of at least 100 yards from the participants.

(3) All persons and vessels permitted by the COTP to enter the safety zone shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, unless authorized by COTP or the designated representative.

(6) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: June 27, 2012.

G.A. Loebl,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 2012–17003 Filed 7–11–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0517; FRL–9690–1]

RIN 2060–AR10

Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating the third step (Step 3) of our phase-in approach to permitting sources of greenhouse gas (GHG) emissions that we committed to do in the GHG Tailoring Rule. This rule completes Step 3 by determining not to lower the current Prevention of Significant Deterioration (PSD) and title V applicability thresholds for GHG-emitting sources established in the Tailoring Rule for Steps 1 and 2. We are also promulgating regulatory revisions for better implementation of the federal program for establishing plantwide applicability limitations (PALs) for GHG emissions, which will improve the administration of the GHG PSD permitting programs.

DATES: This action is effective on August 13, 2012.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2009–0517. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Michael S. Brooks, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–3539; fax number (919) 541–5509; email address: *brooks.michaels@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this Step 3 rule is to continue the process of phasing in GHG permitting requirements under the PSD and title V programs begun in Steps 1 and 2 of the Tailoring Rule.[1] As a result of actions to regulate GHGs under other Clean Air Act (CAA) programs, GHGs are required to be addressed under the major source permitting requirements of the Act's PSD and title V programs. The Tailoring Rule was necessary because the CAA applicability requirements that determine which sources are subject to permitting under these programs are based on annual potential emission rates of 100 or 250 tons per year (tpy). Implementing these requirements for GHG-emitting sources immediately after they became subject to PSD and title V requirements would have brought so many sources into those programs so as to overwhelm the capabilities of state and local (hereafter, referred to collectively as state) permitting authorities to issue permits, and as a result, would have impeded the ability of sources to construct, modify or operate their facilities.

To prevent this outcome, the EPA promulgated the Tailoring Rule to tailor the PSD and title V applicability criteria that determine which GHG sources and modification projects become subject to the permitting programs. In the Tailoring Rule, we explained that the administrative burdens of immediate implementation of the PSD and title V requirements without tailoring ''are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-

[1] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 31514, June 3, 2010 (the Tailoring Rule).

step analytical framework for statutes administered by agencies.'' 75 FR 31517 June 3, 2010. We further explained that on the basis of this legal interpretation, we would phase in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply to at least the largest sources initially, and to as many more sources as promptly as possible, at least to a certain point. *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Step 1, which took effect on January 2, 2011; and Step 2, which took effect on July 1, 2012, and incorporated Step 1. In these steps, we established the PSD and title V applicability thresholds at what we call the 100,000/75,000 levels, which refers to the number of tpy in carbon dioxide equivalent (CO_2e) potential emissions.

In addition, in the Tailoring Rule, we made regulatory commitments for subsequent action, including this Step 3. Specifically, we committed in Step 3 to propose or solicit comment on lowering the 100,000/75,000 threshold on the basis of three criteria that concerned whether the permitting authorities had the necessary time to develop greater administrative capacity due to an increase in resources or permitting experience, as well as whether the EPA and the permitting authorities had developed ways to streamline permit issuance. We committed to complete the Step 3 action by July 1, 2012.

In this rulemaking, we have evaluated whether it is now possible to lower the 100,000/75,000 threshold to bring additional sources into the PSD and title V permitting programs in light of the three criteria. In addition, we have continued our identification and evaluation of potential approaches to streamline permitting so as to enable permitting authorities to permit more GHG-emitting sources without undue burden.

2. Summary of Major Provisions

The EPA is finalizing Step 3 by determining not to lower the current GHG applicability thresholds from the Step 1 and Step 2 levels at this time. We have found that the three criteria have not been met because state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, and that we and the state permitting authorities have not had the opportunity to develop streamlining measures to improve permit implementation.

We are also promulgating revisions to our regulations under 40 CFR part 52 for better implementation of the federal program for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under the EPA's interpretation of the federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis, and we are revising the PAL regulations to allow for GHG PALs to be established on a CO_2e basis as well. We are also revising the regulations to allow a GHG-only source [2] to submit an application for a CO_2e-based GHG PAL while also maintaining its minor source status. We believe that these actions could streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions for a 10-year period.

B. Does this action apply to me?

Entities affected by this action include sources in all sectors of the economy, including commercial and residential sources. Entities potentially affected by this action also include states, local permitting authorities and tribal authorities. The majority of categories and entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Agriculture, fishing, and hunting	11
Mining	21
Utilities (electric, natural gas, other systems)	2211, 2212, 2213
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316
Wood product, paper manufacturing	321, 322
Petroleum and coal products manufacturing	32411, 32412, 32419
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259
Rubber product manufacturing	3261, 3262
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369
Furniture and related product manufacturing	3371, 3372, 3379
Miscellaneous manufacturing	3391, 3399
Waste management and remediation	5622, 5629
Hospitals/Nursing and residential care facilities	6221, 6231, 6232, 6233, 6239
Personal and laundry services	8122, 8123
Residential/private households	8141
Non-Residential (Commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

[2] Consistent with the definition that the EPA is promulgating in 40 CFR 52.21(aa)(2)(xii) and the relevant GHG thresholds in effect at this time, a GHG-only source is an existing stationary source that emits 100,000 tpy CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

C. How is this preamble organized?

The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review
IX. Statutory Authority

D. What acronyms, abbreviations and units are used in this preamble?

The following acronyms, abbreviations and units are used in this preamble:

APA Administrative Procedure Act
BACT Best Available Control Technology
CAA or Act Clean Air Act
CAAAC Clean Air Act Advisory Committee
CFR Code of Federal Regulations
CO_2e Carbon Dioxide Equivalent
EPA U.S. Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GHG Greenhouse Gas
NAAQS National Ambient Air Quality Standard
NACAA National Association of Clean Air Agencies
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PAL[s] Plantwide Applicability Limitation[s]
PSD Prevention of Significant Deterioration
SCAQMD South Coast Air Quality Management District
SIP State Implementation Plan
tpy Tons Per Year
UMRA Unfunded Mandates Reform Act

II. Overview of the Final Rule

In the Tailoring Rule, we included an enforceable commitment to complete a rulemaking to propose or solicit comment on Step 3 of the phase-in approach to GHG permitting, and complete that action by July 1, 2012. We stated in the Tailoring Rule that in Step 3, we would lower the applicability thresholds, and consequently increase the number of GHG sources required to obtain such permits, only if we determined that the states have had enough time to develop the necessary infrastructure and increase their GHG permitting expertise and capacity to efficiently manage the expected increase in administrative burden from such permitting, and only if we and the permitting authorities had the opportunity to expedite, or otherwise decrease the burdens of, GHG permitting through streamlining measures.

We proposed Step 3 by notice dated March 8, 2012.[3] In that notice, we proposed determining not to lower the current applicability thresholds for PSD and title V. We also proposed two streamlining approaches to improve permit implementation: (1) The use of GHG PALs on either a mass or CO_2e basis, which includes the option to use the CO_2e-based increases provided in the subject to regulation applicability thresholds in setting the PAL, and to allow PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation; and (2) regulatory authority for the EPA or a delegated state or local agency to issue synthetic minor limitations for GHG in areas subject to a Federal Implementation Plan (FIP) that imposes PSD permitting programs for GHGs.

In the short period of time since the EPA promulgated the Tailoring Rule, the EPA and the states have not made sufficient progress developing sufficient capacity or streamlining mechanisms to handle a larger number of permits than Steps 1 and 2 require. As a result, we are finalizing Step 3 by determining not to lower the current, 100,000/75,000 applicability thresholds. In addition, we are finalizing a portion of the GHG PALs streamlining measure we proposed for Step 3. At this time we are not finalizing our proposed streamlining measure of providing regulatory authority for the EPA or a delegated agency to issue synthetic minor limitations for GHG in areas subject to a PSD FIP for GHGs or other streamlining measures.

In section III of this preamble, we discuss background information, including how the Tailoring Rule addresses GHG emissions under PSD and title V, what commitments the EPA made for Step 3 and subsequent actions and what we said in the Step 3 proposal.

[3] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations; Proposed Rule,'' 77 FR 14226, March 8, 2012 (the Step 3 proposal).

In section IV, we describe this final action. In section V, we discuss our legal and policy rationale for determining not to lower the current 100,000/75,000 applicability requirements for GHG PSD and title V permitting. In section VI, we discuss our rationale for revising regulations for the better implementation of GHG PALs, which will improve the administration of GHG PSD permitting programs. In section VII, we briefly summarize some key comments received on the portions of the proposal that we are finalizing and we summarize our responses; in section VIII, we address the statutory and Executive Order reviews that are required for all rulemakings; and in section IX, we provide the statutory authority for the rulemaking.

III. Background

This section describes key aspects of the background for this rulemaking. For other background information, such as a description of GHGs and their sources, the regulatory backdrop to the Tailoring Rule and the EPA's GHG PSD and title V programs, *see* the Tailoring Rule, the related actions that the EPA took shortly before finalizing the Tailoring Rule [4] and the GHG PSD and title V implementation rules that the EPA promulgated shortly after the Tailoring Rule.[5] For purposes of this rule, we assume that the reader is familiar with these materials. In the following paragraphs we provide a brief summary of key statutory and regulatory background for the PSD and title V permitting programs for purposes of this rulemaking.

A. Statutory and Regulatory Background for PSD and Title V

Under the CAA, PSD applies to any ''major emitting facility'' that commences construction or undertakes a ''modification.'' CAA section 165(a), 169(2)(C). The Act defines the term ''major emitting facility'' as a stationary source that emits or has the potential to emit any air pollutant in the amount of at least 100 or 250 tpy, depending on the source category, on a mass basis. CAA section 169(1). The Act also defines ''modification'' as any physical or operational change that increases the amount of any air pollutant emitted by the source. CAA section 111(a)(4).

Under the CAA, title V applies to, among other sources, a ''major source,'' which is defined to include any stationary source that is a ''major stationary source'' under section 302 of the Act. CAA section 501(2). Under section 302, a ''major stationary source'' is defined as any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of any air pollutant. CAA section 302(j).

The EPA's regulations implement these requirements. Under the regulations, PSD applies to any ''major stationary source'' that begins actual construction on a new facility or undertakes a ''major modification'' in an area designated as attainment or unclassifiable for a national ambient air quality standard (NAAQS). 40 CFR 52.21(a)(2)(i)–(iii). The regulations define a ''major stationary source'' as a stationary source that emits, depending on the source category, at least 100 or 250 tpy, on a mass basis, of a ''regulated [new source review (NSR)] pollutant.'' 40 CFR 52.21(b)(1)(i)(*a*)–(*b*). A ''regulated NSR pollutant'' is defined as any of the following: (1) In general, any pollutant subject to a NAAQS, (2) any pollutant subject to a new source standard of performance under CAA section 111, (3) any of a certain type of stratospheric ozone depleting substances, or (4) ''[a]ny pollutant that otherwise is subject to regulation under the Act'' (with certain exceptions for hazardous air pollutants under CAA section 112). 40 CFR 52.21(b)(50)(i)–(iv). The title V regulations define a ''major source'' in 40 CFR 70.2.

B. How does the Tailoring Rule address GHG emissions under PSD and title V? [6]

In the Tailoring Rule, the EPA explained that the rulemaking was necessary because without it, the CAA PSD preconstruction review permitting program and the title V operating permit program would apply to all stationary sources that emit or have the potential to emit at least 100 or 250 tpy of GHGs beginning on January 2, 2011.

In the Tailoring Rule, we explained that in light of the overwhelming administrative burdens that would result from applying PSD and title V at the 100/250 tpy statutory levels, we would exercise our legal authority to phase in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' 75 FR 31517 June 3, 2010. In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

In selecting those thresholds, we closely reviewed the numbers of potential additional permitting actions for GHG-emitting sources, and the resulting administrative burdens, that could occur at various permitting thresholds. We further estimated that the combined additional PSD and title V permitting burdens due to Steps 1 and 2 could, on an annual basis, mean a 42 percent increase in costs over the current PSD and title V program. 75 FR 31540, Table V–1 June 3, 2010.

C. In the Tailoring Rule, what commitments did the EPA make for Step 3 and subsequent action?

In the Tailoring Rule we committed to undertake Step 3 by proposing or soliciting comment on lowering the thresholds, so that more sources would be subject to PSD and title V requirements, but we did not commit to finalize lower thresholds. We committed to complete Step 3 by July 1, 2012. We further stated that in light of the administrative burdens, we would not, in Step 3, lower the thresholds below the 50,000/50,000 tpy CO_2e levels. In addition, we committed to complete a study of the administrative burdens by April 30, 2015, and to complete Step 4 by April 30, 2016. 40 CFR 52.22(b); 40 CFR 70.12(b).

[4] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,'' 74 FR 66496, December 15, 2009 (the Endangerment and Cause-or-Contribute Findings); ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,'' 75 FR 25324, May 7, 2010 (the Light-Duty Vehicle Rule); ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' 75 FR 17004, April 2, 2010 (the Timing Decision or the Johnson Memo Reconsideration).

[5] ''Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule,'' 75 FR 77698, December 13, 2010 (the GHG PSD SIP Call); ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule,'' 75 FR 82246, December 30, 2010 (the GHG PSD SIP Call FIP); ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82535, December 30, 2010 (the PSD Narrowing Rule); ''Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 82254, December 30, 2010 (the Title V Narrowing Rule).

[6] We include this discussion of the Tailoring Rule for background purposes only. In our Step 3 proposal we did not re-open for comment any of the determinations made in the Tailoring Rule or subsequent related final rules or our rationale for finalizing such rules, and we do not re-open now.

D. In the Tailoring Rule, what plan did the EPA announce for developing streamlining measures, and what has the EPA done since then?

In the Tailoring Rule, we announced a plan to explore streamlining techniques that could make the permitting programs more efficient to administer for GHGs, and that therefore could allow expanding those programs to smaller sources. Streamlining techniques to be evaluated included: (1) Defining potential emissions to be closer to actual emissions for various source categories, (2) establishing emission limits for presumptive Best Available Control Technology (BACT) for various source categories, (3) encouraging use of general permits or permits-by-rule, (4) encouraging use of electronic permitting and (5) encouraging the application of more efficient techniques (which we call Lean techniques) to the permitting process for more efficient permitting of GHG sources. We believe that these techniques have the potential to streamline the PSD and title V permitting programs for GHGs to ''allow the expeditious expansion of PSD and title V applicability to more GHG-emitting sources while protecting those sources and the permitting authorities from undue expenses.'' 75 FR 31526 June 3, 2010.

While we intend to move forward to develop streamlining approaches, we also stated in the Tailoring Rule that we did not expect to develop and implement any of these prior to Step 3. We also stated in the rule that several of these streamlining approaches will take several years to develop, requiring separate rulemaking both at the federal level, and then through state and local processes. We, nonetheless, committed to explore a number of possible streamlining actions prior to the Step 3 rulemaking.

We are making progress in developing streamlining approaches. In addition to discussing and soliciting comment on streamlining measures in the Step 3 proposal, in April 2012, we convened what we call the GHG Permit Streamlining Workgroup (or the Workgroup). The Workgroup is formed under the Clean Air Act Advisory Committee (CAAAC): Permits, New Source Review and Toxics Subcommittee. The Workgroup is comprised of industrial, environmental, tribal and state and local representatives. It is tasked with exploring potential streamlining approaches that may make the administration of the CAA permitting programs more efficient for permitting authorities, and that may potentially reduce the permitting burden for smaller GHG-emitting sources if the programs are expanded to apply to these sources. The Workgroup meets regularly and is expected to complete a report by October 2012.

E. What did the EPA propose in the Step 3 proposal?

In the **Federal Register** dated March 8, 2012, the EPA proposed Step 3, proposing to determine not to lower the GHG PSD and title V threshold levels from the 100,000/75,000 tpy CO_2e Step 2 levels. 77 FR 14226 March 8, 2012. The EPA explained that the criteria it identified in the Tailoring Rule for evaluating whether to lower the thresholds in Step 3 did not, at the present time, point towards lowering them. The EPA further explained that the states generally had not had the time to increase their resources sufficiently or develop GHG-specific permitting expertise, and that we and the states had not had the opportunity to develop streamlining measures. 77 FR 14228 March 8, 2012.

In addition, we proposed to revise the PSD regulations to provide for GHG PALs. We stated that ''[w]e believe that this action will streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions.'' 77 FR 14228 March 8, 2012.

In addition, we proposed regulatory provisions to allow for ''synthetic minor'' permits for GHGs under the federal PSD program. We stated that ''[w]e believe that permitting synthetic minor GHG sources under these provisions will reduce the number of sources subject to PSD and title V, reducing the burden on state permitting authorities and the sources.'' 77 FR 14228 March 8, 2012.

IV. Summary of Final Actions

A. Applicability Thresholds for GHGs

In this rule, consistent with the proposal, we are finalizing Step 3 by determining not to lower the current 100,000/75,000 tpy CO_2e PSD and title V applicability threshold levels. This action is based on our analysis of the three criteria—(1) the time that permitting authorities need to ramp up their resources, including developing permitting infrastructure as well as hiring and training staff, (2) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits, including gaining experience with GHG permitting and (3) whether the EPA and the states could develop streamlining measures. 75 FR 31559 June 3, 2010. Information currently available to the EPA indicates that these criteria have not been met.

B. Plantwide Applicability Limitations for GHGs

We are finalizing the proposed streamlining measure that would revise the existing PAL permitting program to allow permitting authorities to issue GHG PALs on either a mass basis (tpy) or a CO_2e basis, including the option to use the CO_2e-based increases provided in the subject to regulation thresholds in setting the PAL, and to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. Within the GHG PAL proposal, we discussed the potential options of a Minor Source Approach and a Major Source Opt-in Approach for allowing sources that are not currently major sources to receive a PAL. After reviewing the comments received, we are finalizing the Minor Source Approach, which will allow permitting authorities to issue GHG PALs to GHG-only sources without requiring the source to undertake an action that would make GHGs ''subject to regulation'' and bring the source into major stationary source status under the Tailoring Rule. Thus, GHG-only sources may obtain a GHG PAL and remain a ''minor source'' so long as their GHG emissions remain below the PAL.[7] However, we are not finalizing the Major Source Opt-in Approach, since many public comments that supported the GHG PALs changes questioned the usefulness of this approach for providing real streamlining benefits.

C. Synthetic Minor Source Permitting Authority for GHGs and Other Streamlining Measures

In our Step 3 proposal, we also proposed creating the regulatory authority for the EPA to issue synthetic minor limitations for GHGs in areas subject to a GHG PSD FIP, and discussed our progress in evaluating the suitability of other streamlining measures and solicited further comment on those other streamlining measures. We are not finalizing the proposed synthetic minor streamlining measure for GHGs in areas subject to a GHG PSD FIP after considering public comments that suggest the program may not be

[7] While we are not taking final action on the GHG synthetic minor permitting program described in the Step 3 proposal, that decision does not affect our authority to issue GHG PAL permits under the Minor Source Approach that we are finalizing in this action.

needed at this time. We also are not taking further action on the other streamlining measures at this time, as we consider the comments received. However, we continue to pursue streamlining options as expeditiously as possible, beginning immediately and proceeding throughout the phase-in period and encourage permitting authorities to do the same. We thank the commenters for their input, which we will consider as we move forward to develop effective streamlining measures to make the GHG permitting programs more efficient to administer. Any such action would provide for additional opportunity for stakeholder input and comment, as appropriate.

V. What is the legal and policy rationale for determining not to lower the current thresholds in the final action?

A. Overview

This final rule fulfills our commitment in the Tailoring Rule to undertake Step 3 of the GHG PSD and title V phase-in process. At this time we conclude that while they have taken important initial steps to manage this new program, state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, and that we and the state permitting authorities have not had the opportunity to develop streamlining measures. As a result, the criteria for lowering the applicability thresholds from their current Step 2 levels have not been met. Accordingly, we are determining not to lower the thresholds, so that they will remain at the 100,000/75,000 levels.

In the Tailoring Rule, we committed to undertake future rulemaking, including this Step 3 rulemaking, to examine whether we could lower the thresholds to as low as 50,000/50,000 tpy CO_2e, and thereby apply PSD and title V to more sources. We recognized that lowering the thresholds would add more administrative costs on top of those added by Steps 1 and 2, and as a result, we stated that whether and when we would lower the thresholds would depend on three criteria: (1) The time that permitting authorities need to ramp up their resources, including developing permitting infrastructure as well as hiring and training staff, (2) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits, including gaining experience with GHG permitting and (3) whether the EPA and the states could develop streamlining measures.

As described in the following subsections, the states and the EPA have made some progress in these areas. For example, the states have issued some GHG PSD permits and we will be finalizing one streamlining measure in this final rulemaking. However, neither the states nor the EPA have had the opportunity to make significant progress in these areas. First, the states generally have made little progress in developing their GHG permitting infrastructure—*e.g.,* hiring additional personnel and establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased. In fact, some states indicate that their permitting resources have decreased, and some indicate that their resources may decrease further in the near future. Second, the states have had only limited experience in GHG PSD permitting and therefore have not had the opportunity to develop significant expertise. The main reasons for this are the unexpectedly low amount of PSD permitting to date and the short amount of time since GHG permitting began. Similarly, for title V, applications for title V permits are generally not due until a year after title V becomes applicable to a source. Thus, for Step 2 title V sources, permit applications were generally not due until July 1, 2012. As a result, states would only start reviewing such applications by this date, and accordingly they would not have gained much experience permitting such sources under title V by July 1, 2012. Finally, the states and we have not had the opportunity to develop significant streamlining approaches. This is largely because, as we stated in the Tailoring Rule, certain streamlining approaches require a longer process to develop, including significant data collection activities, notice and comment rulemaking to obtain specific authority and, in some cases, the development of necessary implementation tools. Because of these criteria, we are not lowering the thresholds from their current levels.

The following discusses these criteria, and notes the states' and our experience with GHG permitting to date under the current Step 1 and Step 2 applicability thresholds. We also address the environmental benefits potentially associated with any further reduction in the GHG PSD permitting thresholds.

B. Have states had adequate time to ramp up their resources?

One criterion that we described in the Tailoring Rule for whether to lower the thresholds in Step 3 was whether the permitting authorities could increase their resources. Specifically, we described this criterion as ''the time that permitting authorities need to ramp up their resources in an orderly and efficient manner to manage the additional workload.'' 75 FR 31559 June 3, 2010. We explained that we expected Steps 1 and 2 to result in an increase in the numbers of PSD permits for new construction and modifications and in the numbers of title V permits; and we expected that some increase in state permitting resources would be needed to accommodate, at least in part, those new demands.

In fact, all indications are that the states have not had the opportunity to obtain the necessary resources and to develop their infrastructure to accommodate the level of permitting expected in Steps 1 and 2. Instead, in many cases, reductions in state environmental agency budgets have occurred, which is fully consistent with the overall reductions in state budgets that have been recently seen across the nation.

In the proposal, we noted several indications that state permitting resources have decreased in the past several years. For example, an August 2010 report by the Environmental Council of the States concluded that state budgets decreased by an average of approximately $21 million per state from 2009 to 2011.[8] In addition, a June 28, 2011 letter from the National Association of Clean Air Agencies (NACAA) to the U.S. House of Representatives detailing the status of 40 state and local air quality agencies[9] indicated that 80 percent of air agencies experienced a decline in staffing levels in the preceding 4 years. According to the letter, over the years 2008–2010, the average loss of staff per agency was 16.7 percent. In addition to staffing losses, 48 percent of air agencies experienced furloughs, and the majority faced significant declines in budgets. These cutbacks resulted in curtailing core air program activities including permit issuance, as well as education and outreach programs. Further, we also noted in the proposal that we had consulted informally with some states, and many confirmed that they have seen

[8] S. Brown, A. Fishman, ''The Status of State Environmental Agency Budgets, 2009–2011.''

[9] Letter from S. William Becker, NACAA, to Honorable Michael Simpson and Honorable James Moran, U.S. House of Representatives.

their budgets and staffs reduced in recent years as the states have responded to the economic downturn and budget shortfalls.

In light of these developments, we noted in the Step 3 proposal:

* * * States have not been able to develop their GHG permitting infrastructure—*e.g.,* hiring additional personnel, establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased and, in fact, in some cases have decreased and may decrease further in the near future.

77 FR 14235 March 8, 2012. We received comments from states and localities supporting those statements, and providing confirmation that their resources for GHG permitting were falling, in part because of lower overall resources. For example, the South Coast Air Quality Management District (SCAQMD) stated, ''* * * SCAQMD's overall staffing, as well as permitting resources, continue to drop.'' [10] [11]

These recent reductions in state permitting resources have undermined the states' ability to build their GHG permitting infrastructure through hiring and training of staff and through education and outreach programs to the affected sources.[12] These reductions point away from lowering the Step 1 and 2 thresholds at this time. In the Tailoring Rule, we estimated that lowering the thresholds to 60,000/60,000 tpy CO_2e would increase administrative burdens by 20 percent above the total burdens at the Step 2 levels (and 40 percent above the pre-GHG permitting burdens); and that lowering them to 50,000/50,000 tpy CO_2e would increase administrative burdens by 40 percent above the total burdens at the Step 2 levels (and 99 percent above the pre-GHG permitting burdens). Also, as a result of a large increase in the number of GHG sources required to get permits, permitting agencies will need to conduct education and outreach programs to small business and the public who have not typically been subject to air quality permitting requirements in the past to raise awareness and understanding of the regulatory requirements for these smaller sources. Absent this outreach effort, we believe that many sources will not understand, and perhaps may not even be aware of, the new regulatory obligations.

It is important to recognize that to this point, states have not been confronted with the amount of GHG permit activity that we estimated in the Tailoring Rule for Steps 1 and 2. Environmental advocacy organizations emphasized this point in commenting on the proposal, and one of these organizations concluded that the EPA should lower the thresholds. We respond to these comments in more detail below, but in brief, although we recognize the disparity in actual permitting activity compared to our estimates, this disparity does not serve as a basis for lowering the thresholds in this Step 3 rulemaking. As we discuss below, there is some indication that at least part of this disparity may be temporary, due to the recent economic downturn and slow recovery, as well as other factors. Moreover, in the Tailoring Rule, we based the level of the thresholds on overall administrative burden that we determined based on several sets of data and a complex, multi-component methodology. The number of GHG permits is an important component of overall burden, but there are other components as well, including (1) the per-permit processing costs and (2) other administrative burdens, including training and enforcement expenses, public education and outreach expenses, and the expenses of additional synthetic minor source permitting for GHG sources seeking to avoid PSD and title V applicability. At this time, with just the first year of implementation of the Step 2 thresholds having been completed on June 30, 2012, we do not have enough new information about the data sets and methodology to merit revising the administrative burden estimates or, therefore, the thresholds. In particular, we note some indications that in the Tailoring Rule, we may have underestimated the administrative burdens in certain respects by, for example, not fully accounting for the additional synthetic minor permitting activity, that is, sources taking synthetic minor limitations on their GHG emissions so as to avoid becoming subject to PSD or title V due to those emissions. As a result, contrary to the commenters, we do not consider the unexpectedly smaller number of GHG permits to indicate that states have greater permitting capacity.

For the previously described reasons, states have not had the opportunity to build capacity and resources to handle GHG permitting. Accordingly, this criterion of state resources supports determining not to lower the current thresholds.

C. What is the ability of permitting authorities to issue timely permits?

Another criterion identified in the Tailoring rule is whether permitting authorities have the ability to issue timely permits [13] based on efficiencies resulting from GHG permitting implementation experience.[14] In describing this criterion in the Tailoring Rule, we expected that permitting authorities, by acting on the anticipated volume of GHG PSD permit actions, would have the opportunity to establish efficient methods for resolving issues and processing permits, including developing expertise within their staffs. This would allow them to achieve efficiencies that, in turn, would create capacity for processing more GHG

[10] The SCAQMD comments are located in the docket for this rulemaking, Docket No. EPA–HQ–OAR–2009–0517–19280.

[11] One environmental advocacy organization commented that in its view, its home state of Pennsylvania underfunded the state environmental agency. The commenter emphasized that such underfunding should not be taken as an indication of a lack of GHG permitting capacity. Another environmental advocacy organization made a comparable point more generally. We have applied this criteria on a nationwide basis, and we have found that many states are confronting decreased resources, including states, such as some of the ones in the Regional Greenhouse Gas Initiative, that have taken action to regulate GHGs.

[12] As we noted in the Step 3 proposal, some states have also been obliged to devote resources to developing and submitting for EPA approval SIP revisions and title V program revisions authorizing GHG permitting, instead of using those resources to build GHG permitting infrastructure. 77 FR 14236 March 8, 2012.

[13] This criterion may be measured by the period of time permitting authorities need to issue permits.

[14] In the Tailoring Rule, we described this criterion as ''information we have as to the sources' abilities to meet the requirements of the PSD program and the permitting authorities' ability to process permits in a timely fashion.'' 75 FR 31,559 June 3, 2010. An issue arises as to the meaning of this reference to sources. We stated in the Step 3 proposal: ''We note that in the Tailoring Rule, we made clear that sources' abilities to meet the requirements of the PSD and title V programs depend at least in part on the ability of the states to develop, as part of the state programs, outreach and educational efforts to facilitate source compliance. Accordingly, for present purposes, we think this component concerning sources may be examined by a review of the states' progress in developing state GHG permitting programs.'' 77 FR 14232 March 8, 2012. Industry commenters took issue with this statement, and asserted that this criterion requires an examination of sources' abilities to meet PSD requirements that is independent of the permitting authorities' ability to process permits in a timely fashion. We do not find it necessary in this rulemaking to resolve this issue as to the meaning of the reference to sources. This is because for purposes of this rulemaking, the information we have about permitting authorities leads us to conclude that this criterion points towards determining not to lower the thresholds. Even if the sources were to be treated as a separate component of this criterion, no commenter suggested that information about the sources would lead us to conclude anything differently about this criterion. Because, in this rulemaking, information about sources does not play a role in assessing this criterion, it is not necessary to resolve the issue of the meaning of the sources' abilities to comply with GHG permitting requirements, and whether sources' abilities to comply should be considered independently from the permitting authorities' ability to administer GHG permitting.

permit applications. Thus, with this criterion, we based our commitment to complete the Step 3 rulemaking in part on the assumption that Steps 1 and 2 would provide us with the necessary information to determine whether and when it has become possible for states to administer GHG permitting programs for additional sources. However, as events have transpired, states have not yet had the opportunity to make this progress.

In our Step 3 proposal, we showed that as of December 1, 2011, the EPA and permitting authorities had issued 18 GHG PSD permits. We noted that these 18 permit actions had been spread among 11 states, almost all of which had issued only one GHG permit. We concluded: ''This activity has simply been too limited to allow States to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category, or to develop streamlining approaches to address GHG permitting.'' 77 FR 14237 March 8, 2012.

Since then, the pace of permitting has remained too low for states to build their GHG permitting capacity. As of May 21, 2012, the EPA and permitting authorities have issued a total of 44 GHG PSD permits. Importantly, states have seen little if any title V permitting activity to this point; indeed, applications for title V permits from Step 2 (or ''GHG-only'') sources were generally not due until July 1, 2012 (*i.e.,* 1 year after the effective date of Step 2, when GHG-only sources could have first become subject to title V).

Therefore, the conclusions we drew at proposal remain valid. The GHG permitting activity has simply been too limited to allow states to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category or to develop streamlining approaches to address GHG permitting. In sum, the states' experiences to date do not provide a basis for us to conclude that permitting authorities in fact have the ability to issue timely permits for a larger set of actions based on GHG permitting experience. Therefore, this criterion points towards determining not to lower the current thresholds.

D. What progress has the EPA made in developing streamlining methods?

In the Tailoring Rule, we indicated that the criterion of implementation of permit streamlining measures would assist permitting authorities by removing some sources from the permit program, or allowing more efficient processing of permit applications. Specifically, we described this criterion as ''our progress in developing streamlining methods that will render the permitting authority workload more manageable by taking some sources off the table (through regulations or guidance interpreting 'potential to emit'), and by allowing for more efficient permit processing (through general permits and presumptive BACT).'' 75 FR 31559 June 3, 2010. We further stated, however, that some streamlining methods would take several years for the EPA to develop, and for states to gain authority to implement. Thus, we did not anticipate that streamlining approaches would necessarily be available by the time of the Step 3 rulemaking. We also noted that in consultations with the states, they reported that they had made little progress in implementing streamlining measures, and none had adopted streamlining measures specifically to address GHGs.

The states and we continue to make progress in streamlining. The revision to the PALs regulations that we promulgate in this action is a step in that direction. In addition, as noted, we recently convened the CAAAC GHG Permit Streamlining Workgroup to explore potential streamlining approaches. The Workgroup meets regularly and is expected to issue a report by this October with suggestions for specific approaches. Even so, to this point, neither we nor the states have been able to develop or implement sufficient streamlining actions to meaningfully reduce permitting administrative burdens. Accordingly, this criterion points towards determining not to lower the current thresholds.[15]

E. What would be the effects on emissions of lowering the current thresholds?

The fact that the PSD program would apply to a large percentage of the national inventory of stationary source GHG emissions at the 100,000/75,000 tpy CO_2e levels of the Tailoring Rule, while increasing the number of sources subject to permitting by only a modest amount, supported the reasonableness of our decision to establish the thresholds at those levels. For the current rulemaking, we have conducted further analysis, which shows that reducing the thresholds in Step 3 to as low as 60,000/60,000 tpy CO_2e would bring within the potential sphere of the PSD program less than an additional 1 percent of all GHG emissions from all stationary sources nationally while potentially subjecting over 2,000 additional sources to the permitting program. Our analysis shows that as the thresholds go lower, the number of sources increases dramatically, but the volume of GHG emissions emitted by each additional source gets smaller and smaller. Lowering the thresholds to 50,000/50,000 tpy CO_2e would bring within the sphere of PSD an additional 3 percent of the national inventory of GHG emissions while potentially subjecting over 4,500 additional sources to the permitting programs. Of course, in any year, only a fraction of national GHG stationary source emissions would actually become subject to PSD controls because only a fraction of sources would undertake modifications or new construction that trigger BACT controls. Thus, the additional reductions in GHG emissions from lowering the thresholds in Step 3 would be small under any circumstances even if the thresholds were lowered to 50,000/50,000 tpy CO_2e. This small amount of incremental environmental benefit from lowering the thresholds, coupled with the additional burden associated with permitting these sources (in light of the lack of increase in state resources and experience as well as the lack of streamlining measures), supports the reasonableness of our determination not to lower the thresholds in Step 3.

F. What is the effective date of this action?

The effective date of this action is August 13, 2012. In the Tailoring Rule, we provided that Step 3 would take effect by July 1, 2013.[16] We selected this date because it would provide a 1-year delay following the required, July 1, 2012 date of promulgation of Step 3. The purpose of the delay would be to allow states sufficient time to incorporate any lower thresholds into their state implementation plans (SIPs), and submit a SIP revision for EPA approval. However, because the EPA is determining not to lower the thresholds, SIP revisions are not necessary and, as

[15] Environmental advocacy organization commenters stated that in light of the less-than-expected amount of GHG permitting activity, the three criteria should be considered either to be irrelevant or to have been met. We respond to this comment below and, in more detail, in the Response to Comments document.

[16] The Tailoring Rule regulations provide that Step 3 ''shall become effective July 1, 2013.'' 40 CFR 52.22(b)(1), 70.12(b)(1), 71.13(b)(1), which we read to mean effective by July 1, 2013, consistent with the accompanying discussion in the preamble. 75 FR 31516 June 3, 2010 (describing Step 3 as possibly including more sources ''beginning by July 1, 2013'').

a result no delay in the effective date is necessary.

G. Conclusion

In the Tailoring Rule, we recognized that the Step 1 and 2 thresholds we promulgated would create significant administrative burdens on permitting authorities. We stated that we would lower the thresholds, and thereby create additional administrative burdens, based on consideration of three criteria concerning state resources and experience as well as EPA and state efforts to streamline the permitting process. In this rulemaking, on the basis of these criteria and the public comments received, we determine not to lower the thresholds at this time. Permitting authorities need additional time to secure resources, hire and train staff, and gain experience with GHG permitting, and additional time is required to develop streamlining measures to expedite permit program administration, before we move toward fuller implementation of the program. We note that determining not to lower the current PSD and title V thresholds for Step 3 does not have implications for whether we will lower the thresholds in Step 4 or afterwards. Our actions in Step 4 will depend on our evaluation of the appropriate factors at the time of that rulemaking. If those factors point in the direction of lowering the thresholds, we will act accordingly.

As noted, we recognize the concerns expressed by environmental advocacy organization commenters concerning the disparity between expected number of permits and actual number of permits. We intend to track permitting activity to provide a sufficient base of information to assure that the 5-year study (required to be completed by April 30, 2015) is robust, and to facilitate appropriate action concerning the thresholds in Step 4 (required to be completed by April 30, 2016). We discuss these plans below in our response to these commenters.

VI. What streamlining approach is the EPA finalizing with this action?

In the Tailoring Rule, the EPA committed to explore streamlining measures as an integral part of the phase-in approach to permitting requirements for GHG emissions under PSD and title V. Streamlining techniques would allow permitting authorities to be more efficient in administering their GHG permit programs by reducing the overall resources required to administer these programs now and in the future. By implementing effective streamlining techniques, permitting, authorities could move more rapidly toward regulating a larger set of GHG sources at lower thresholds. In the Tailoring Rule, we identified potential streamlining options. We also acknowledged that it will take us several years to develop, and for states to gain authority to implement, effective streamlining methods. We committed to continue to explore the identified options, and to request comment on these and any additional streamlining approaches in the Step 3 rulemaking.

This final rule provides a mechanism to streamline the GHG PSD permit program by expanding the existing PSD PAL provisions to better implement PALs for GHGs. The expanded PAL provisions (1) allow permitting authorities to establish GHG PALs on either a mass basis (tpy) or a CO_2e basis, (2) include the option to use the CO_2e-based increase provided in the subject to regulation thresholds in setting the CO_2e PAL, (3) include the option to issue a GHG PAL (issued on a mass basis or CO_2e basis) to GHG-only sources that have the potential to become major sources under the Tailoring Rule and (4) allow GHG PALs (issued on a mass basis or CO_2e basis) to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. Accordingly, permitting authorities implementing the federal PSD program will be able to use the authority provided to them under 40 CFR 52.21, including the changes finalized in this rule, and corresponding permitting procedures (such as those in 40 CFR part 124) to issue PAL permits for GHGs in a manner consistent with PAL permits issued for regulated NSR pollutants other than GHGs.

In the Tailoring Rule, we did not identify PALs as a viable streamlining technique for GHG sources. However, since we finalized the Tailoring Rule, we have recognized that PALs could be designed in a way that could be useful for easing the administration of GHG permitting, and we proposed changes to the existing PAL rules in our Step 3 proposal to address the unique PSD applicability aspects associated with GHGs. In the final rule, we have amended the existing PAL regulations to recognize the unique applicability characteristics of GHGs and to provide GHG sources with greater operational flexibility, while making application of the PAL rules to GHGs more consistent with the outcome achieved when those rules are applied to other regulated NSR pollutants. We believe the approach to PALs in the final rule will provide air quality benefits by encouraging sources to control GHG emissions through efficiency improvements or the use of other emission reduction procedures, processes or equipment before such sources are subject to PSD permitting for GHGs, and may encourage sources potentially subject to PSD to limit their emissions without triggering major modification permitting procedures or related administrative processes necessary to revise title V permits to reflect such major modifications.

Accordingly, this final rule amends the PSD regulations at 40 CFR 52.21 to create authority for permitting authorities applying the federal PSD permitting program to issue PALs on either a mass basis or a CO_2e basis to major sources and GHG-only sources that have the potential to become major sources, including the option to use the CO_2e-based applicability thresholds provided in the ''subject to regulation'' definition in setting the PAL limit for a CO_2e-based PAL, and also to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs. We are also making small changes to a number of the existing provisions in order to ensure that those provisions can be implemented in light of the GHG-based changes described above. In so doing, we did not seek comment on or re-open the entire PAL program. Instead, the request for comment was limited to the specific changes we are making with respect to GHGs (non-GHG PAL-related issues are outside the scope of this rulemaking). The following discussion outlines our approach to PALs for GHGs.

A. What is the EPA finalizing?

As noted, we are finalizing revisions to the federal PAL regulations to allow permitting authorities to establish GHG PALs on either a mass basis (tpy) or a CO_2e basis, including the option to use the CO_2e-based applicability thresholds for GHGs provided in the subject to regulation definition in setting the PAL on a CO_2e basis and to issue a GHG PAL to GHG-only sources that have the potential to become major sources under the Tailoring Rule (Minor Source Approach), and to allow GHG PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation.

B. What is a PAL?

Under the EPA's existing regulations, a PAL is an emissions limitation for a single pollutant expressed in tpy that is enforceable as a practical matter and is established source-wide in accordance

with specific criteria. 40 CFR 52.21(aa)(2)(v). Such PALs are voluntary in the sense that sources may, but are not required to, apply for a PAL, and the decision to issue a PAL to particular source is at the discretion of the permitting authority. These PALs offer an alternative method for determining major NSR applicability. If a source can maintain its overall emissions of the PAL pollutant below the PAL level, the source can make a change without triggering PSD review. This allows sources to make the changes necessary to respond rapidly to market conditions, while generally assuring the environment is protected from adverse impacts from the change. A PAL also results in significant environmental benefit by providing the community with an understanding of the long-term emissions impact from a facility, by preventing emissions creep (*i.e.,* a series of unrelated individual emissions increases that are below major NSR applicability thresholds) and by requiring enhanced monitoring, recordkeeping and reporting provisions to demonstrate compliance with the PAL.

C. Why is the EPA amending the regulations?

We are revising the existing PAL regulations because the EPA interprets the existing regulations under 40 CFR 52.21 for the federal PAL and PSD programs to allow permitting authorities to issue GHG PALs only on a mass basis.[17] In addition, our interpretation of the existing regulations did not provide for the use of the CO_2e-based subject to regulation thresholds in setting the PAL limit, only allowed GHG PALs to be issued to existing major stationary sources [40 CFR 52.21(aa)(1)] and did not allow compliance with a PAL to be considered for the purpose of determining whether GHG emissions are ''subject to regulation.''

The PSD provisions generally define a ''major stationary source'' as a stationary source which emits or has the potential to emit 100 or 250 tpy or more of a regulated NSR pollutant, depending on the type of source. 40 CFR 52.21(b)(1)(i)(*a*)–(*b*). A ''GHG-only source'' is an existing stationary source that emits or has the potential to emit 100/250 tpy of GHGs on a mass basis, and emits or has the potential to emit CO_2e in amounts equal to or more than the GHG subject to regulation threshold for new sources (currently 100,000 tpy of CO_2e or more), but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold. Regardless of the amount of GHGs currently emitted, a GHG-only source that has avoided PSD applicability for GHG under Step 1 or 2 of the Tailoring Rule would be a minor source for purposes of PSD, and could only become major for PSD when it proposes to undertake a change that increases GHG emissions by at least 75,000 tpy CO_2e, the amount of increase needed under the current Tailoring Rule thresholds.[18] 40 CFR 52.21(b)(49)(v)(*b*). Because the existing PAL provisions are only available to existing major stationary sources, permitting authorities issuing a PAL under the federal PAL program can only issue a PAL to a GHG-only source when the source proposes to undertake a change that would make it an existing major stationary source.[19] 40 CFR 52.21(aa)(1). As a result, GHG-only sources may not currently use PALs as an alternative mechanism for determining major NSR applicability in the same way that existing major stationary sources of non-GHG regulated NSR pollutants may. Instead, because the Tailoring Rule applicability determinations depend on the GHG emissions related to a particular action on the part of the source, GHG-only sources must currently wait to obtain a PAL until they actually propose to make a change that qualifies the source as a major stationary source under the PSD program. Moreover, as we read the current federal regulations in 40 CFR 52.21, any GHG PALs issued under those regulations can only be mass-based. This requirement is due to the fact that PALs were originally designed to be an alternative method for determining PSD applicability for regulated air pollutants, and such pollutants only have mass-based applicability triggers for PSD, which the PAL provisions reference. For example, setting an actuals PAL level under 40 CFR 52.21(aa)(6) of the existing regulations requires reliance on the mass-based baseline actual emissions under 40 CFR 52.21(b)(48) and mass-based significant levels under 40 CFR 52.21(b)(23).

On the other hand, PSD applicability for GHG emissions from existing sources under the Tailoring Rule relies on CO_2e thresholds for determining whether the GHG emissions from any particular action are ''subject to regulation,'' which in turn informs the determination of whether a source is a major modification. Thus, under the current regulations, there is a mismatch between the mass-based PAL and the CO_2e-based portions of the PSD applicability thresholds, such that the existing PAL regulations do not provide an effective alternative applicability determination mechanism for GHG sources.

We believe changing the PAL regulations to provide for CO_2e-based PALs will provide GHG sources with additional operational flexibility, and could reduce GHG workload burdens on permitting authorities by decreasing the number of PSD permit applications that permitting authorities must process for these sources over the long term. Being able to establish a PAL on a CO_2e basis will provide planning certainty to GHG sources, and will relieve the current time pressure to issue a PAL permit concurrent with authorization for a planned major modification which could potentially delay that project. We also believe that, regardless of which metric is specified to measure GHG emissions in a PAL, compliance with a GHG PAL generally assures that the environment remains protected from adverse air impacts resulting from changes a source undertakes in compliance with such a PAL, because emissions cannot exceed this pre-established level without further review. A PAL also provides an incentive for a source to minimize GHG emissions increases from future projects in order to stay under the PAL and avoid triggering major modification permitting requirements.

These regulatory changes that allow sources to establish a PAL on a CO_2e basis also make PALs for GHGs function similarly to PALs for non-GHGs. A significant emissions rate, as specified in 40 CFR 52.21(b)(23), is a threshold used to determine when PSD applies to modifications at existing major stationary sources, and only modifications that result in net emissions increases above the significant rate trigger major PSD permitting requirements. Unless a specific significant emissions rate has been established, the federal regulations specify that the significant rate is effectively zero, *i.e.,* any increase in emissions would trigger PSD. Under the

[17] *See* EPA guidance ''Establishing a Plantwide Applicability Limitation for Sources of GHGs'' April 19, 2011, located at *http://www.epa.gov/nsr/ghgdocs/ghgissuepal.pdf.*

[18] This is a consequence of the wording used to implement the Tailoring Rule Step 1 and 2 thresholds through the definition of ''subject to regulation.''

[19] While the changes we are finalizing in this rulemaking will allow minor sources that are also GHG-only sources to obtain a PAL for their GHG emissions only under the federal PAL program, the revisions in this rulemaking will not allow any other minor sources to obtain a PAL for any pollutants and do not otherwise disturb the settled requirement that a source seeking to obtain a PAL for non-GHG pollutants must be a major stationary source.

current PAL provisions, a permitting authority establishes the PAL level for a pollutant at a particular source by adding the applicable significant rate found in 40 CFR 52.21(b)(23) to the baseline actual emissions of that pollutant at the source.

The EPA did not promulgate a significant emissions rate for GHG emissions in 40 CFR 52.21(b)(23) in the final Tailoring Rule. Thus, if a permitting authority establishes a mass-based GHG PAL under the existing federal regulations, the PAL level included in the permit may not include any margin above the baseline actual emissions to account for emissions growth. Absent this margin, a GHG PAL would usually provide less flexibility to a source when compared to PALs for other regulated NSR pollutants.

This final rule revises the PAL and ''subject to regulation'' provisions in 40 CFR 52.21 to provide GHG sources with the same kind of flexibility sources currently have for other regulated NSR pollutants by allowing sources the option to establish a CO_2e-based PAL using the CO_2e-based emission increase provided in the subject to regulation thresholds in 40 CFR 52.21(b)(49). Thus, under the final rule, a permitting authority issuing a CO_2e-based PAL under the current Tailoring Rule thresholds may add 75,000 tpy CO_2e to a source's CO_2e baseline actual emissions to establish the PAL level, because the Tailoring Rule established 75,000 tpy CO_2e as the appropriate rate of emissions increase for the GHG subject to regulation applicability threshold for existing sources. In the Tailoring Rule, the EPA revised the definition of ''subject to regulation'' to establish a threshold level of GHG emissions that a source must meet, on both a source and project basis, before GHGs are considered a regulated NSR pollutant for PSD permitting purposes. However, the EPA also made clear that its action had the same substantive effect and should be treated as if the EPA had revised other components of the definition of ''major stationary source'' to achieve the same effect. Thus, in addressing PALs for GHGs in this rule, the EPA is continuing to focus on the thresholds incorporated into the ''subject to regulation'' provision, consistent with the approach in the Tailoring Rule.

The PAL revisions in this final rule will also have the effect of streamlining future major NSR applicability determinations for sources that choose a GHG PAL. The revisions eliminate the need to evaluate GHG emissions for major NSR applicability as long as the source is complying with the GHG PAL, because a GHG PAL can function to assure not only that a change is not considered a major modification, but also that GHG emissions from the source undertaking that change are not subject to regulation. Since the PSD regulations, including the Tailoring Rule, require an existing source to determine (1) whether a specific action would increase the GHG emissions by a certain CO_2e amount that would make them subject to regulation for PSD permitting purposes, and if so, (2) whether the GHG emissions increase is also significant on a mass basis to qualify the change as a major modification, the rule changes that allow for setting a GHG PAL at a level that either includes the CO_2e-based increase identified in the Tailoring Rule thresholds or the mass-based significant emissions rate will insure that the source does not exceed that amount and thus will not emit GHGs in amounts that would trigger PSD permitting obligations. In sum, we believe that the existing federal PAL regulations do not generally provide an effective means of achieving burden reductions for permitting authorities and GHG sources when compared to the operational flexibility provided by PALs for regulated NSR pollutants other than GHGs, and therefore are overly restrictive with respect to GHG sources. Accordingly, in this final rule we are revising the PSD rules for PALs to allow permitting authorities to: (1) Issue effective PALs to GHG-only sources; (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; (3) allow CO_2e-based PALs to include the CO_2e-based emission increases provided in the subject to regulation thresholds; and (4) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining both whether a project is a major modification and is subject to regulation for GHGs. Provided a source complies with a GHG PAL that meets the requirements in 40 CFR 52.21(aa)(1) through (15), GHG emissions at the source will not be ''subject to regulation,'' and a project at the source will not result in a major modification for GHG purposes.

The Minor Source Approach discussed in the proposal for Step 3 allows a GHG-only source to remain a minor source for PSD purposes and still obtain a GHG PAL.[20] In this way permitting authorities can issue a GHG PAL to a GHG-only source that would only cover GHG emissions without requiring the source to trigger PSD permitting requirements as a prerequisite.

We are providing for the Minor Source Approach for GHG PALs in this final rule by revising the PAL regulations to allow a GHG-only source to submit an application for a GHG PAL while maintaining its minor source status. We also define a number of terms when used for the specific purpose of imposing a GHG PAL for a minor source. A GHG-only source that complies with its GHG PAL will not trigger PSD permitting requirements for GHGs, but could still trigger PSD for other regulated NSR pollutants if it undertakes a change that increases emissions by an amount at or above the major source threshold for any non-GHG regulated NSR pollutant. 40 CFR 52.21(b)(1)(i)(*c*).

Moreover, under the Tailoring Rule, GHG-only sources must determine whether any project will result in GHG emissions that are subject to regulation (on a CO_2e basis) and correspondingly will also result in a major modification (on a mass basis). Because GHG-only sources must undertake these determinations for any change, even those that would not lead to emissions at or above the applicable thresholds for GHGs, the regulatory revisions we are finalizing clarify that GHGs will not be ''subject to regulation'' under 40 CFR 52.21(b)(49) at such sources, as long as the source is complying with a GHG PAL that meets the requirements in 40 CFR 52.21(aa)(1) through (15). We believe that extension of the PAL program to these sources through the Minor Source Approach is consistent with the purposes and design of the PAL program—to allow use of a PAL as an alternative PSD applicability approach for existing sources.

Issuing GHG PALs to GHG-only sources that remain minor sources does not conflict with the basis for the existing PAL rules. When we promulgated the existing PAL rules in 2002 (67 FR 80186), we limited the application of the PAL provisions to existing major stationary sources only. We included this provision based on our decision to limit PALs to sources that had historical emissions through which the permitting authority could establish a baseline actual emissions level. New major stationary sources do

[20] A source may be major for title V but minor for PSD because of the difference in applicability thresholds (*e.g.,* title V major source status may be 100 tpy on a mass basis for a particular regulated air pollutant but 250 tpy on a mass basis under PSD for the same pollutant) and/or for other reasons (*e.g.,* a source that did not trigger PSD when it commenced construction and that did not subsequently increase its emissions above any major modification threshold but still has emissions over 100 tpy on a mass basis). In such cases, the title V permit may be an available mechanism to issue such PALs. 40 CFR 52.21(aa)(2)(ix).

not have historical actual emissions from which a permitting authority can establish an actuals PAL, and so we declined to include these sources in the actuals PAL program. By contrast, because GHG-only sources are existing sources, specific sources could already have sufficient historical actual emissions data to provide the GHG information necessary to set the actuals PAL for GHGs or may be collecting data now that would allow them to establish a GHG PAL in the future. However, permitting authorities retain discretion to determine, on a case-by-case basis, whether the historical actual emissions data available for a particular source is sufficient to establish a GHG PAL.

When we originally promulgated the PAL rules, we also chose not to extend the PAL program to minor source NSR permit programs, because the PAL rules provide an alternative PSD applicability provision to determine whether a project results in a major modification, and we did not believe the program would be useful to minor sources. At that time, the rules generally required only existing major stationary sources to undertake a major modification applicability analysis to determine whether a change triggers PSD review. Given the unique ''subject to regulation'' PSD applicability requirement for GHGs, wherein an existing source that emits major amounts of GHGs is a major stationary source only at the time it proposes to undertake a project that will result in an emissions increase that equals or exceeds the subject to regulation thresholds, we do not believe that extending the PAL provisions to allow GHG-only sources to get GHG PALs runs afoul of the reasoning we provided when initially limiting the PAL program to existing major stationary sources.

Because the GHG-only source must be a minor source when it applies for its GHG PAL and will remain a minor source under this Minor Source Approach (absent any other PSD-triggering change), and will not be expected to trigger a major modification applicability analysis for future increases in non-GHG regulated NSR pollutants, we believe it is unnecessary to extend the PAL authority under this approach to other pollutants. Moreover, we recognize that extending the PAL program in that way could place a burden on permitting authorities and redirect resources needed to issue permits to other stationary sources that trigger PSD requirements for GHGs.

The Minor Source Approach of the final rule is consistent with the CAA in that it regulates sources that, but for the Tailoring Rule, would be major stationary sources based on the mass of their GHG emissions. This approach is also consistent with our Tailoring Rule principles, since we expect that the GHG PALs established under this rule would be established at levels very close to relevant GHG applicability thresholds in the Tailoring Rule. Because of the unique nature of GHG emissions, the EPA has determined that the scope of the regulatory revisions that it is finalizing to implement this Minor Source Approach for PALs is available only for a source's GHG emissions and not for non-GHG pollutants. As mentioned above, the Minor Source Approach for GHG PALs also fulfills our streamlining goals by allowing applicability determinations for PSD to occur through an alternative mechanism that helps to manage permitting authorities' long term permitting burdens.

These regulatory revisions are also consistent with our permitting authority under the CAA. As we explained in the Step 3 proposal, in the context of the Tailoring Rule, we interpret sections 165, 169 and 301 of the CAA to provide authority to issue preconstruction permits to GHG sources that do not qualify as major sources under the Tailoring Rule, but that emit or have the potential to emit GHGs at or above the statutory major source thresholds and that, without the Tailoring Rule, would qualify as ''major emitting facilities'' under the CAA. As explained in the Tailoring Rule, because the administrative burden associated with immediately implementing the PSD permitting program at statutory levels for GHGs would have crippled the program, we tailored the program and phased in the permitting requirements to ensure that the program would be administrable for GHGs. Under the Minor Source Approach that we are finalizing in this action, qualifying sources emit or have the potential to emit GHGs in levels above, and in many cases much higher than, the statutory thresholds. But for the Tailoring Rule, such sources would qualify as ''major emitting facilities'' under CAA section 169 and would be subject to PSD permitting requirements. Because the PAL provisions finalized today could also help to ensure that the PSD permitting program can be administered in an effective and efficient manner for GHGs, we interpret CAA sections 165 and 169 to convey to permitting authorities, including the EPA, the legal authority to issue GHG PAL permits to sources that qualify under the Minor Source Approach. Similarly, we interpret CAA section 301(a)(1) to provide additional authority to issue PAL permits to such sources. Accordingly, the EPA interprets sections 165, 169 and 301 of the CAA to provide the authority to issue GHG PAL permits under the Minor Source Approach as finalized in this action.

D. Extending PALs to GHGs on a CO_2e Basis and Using PALs To Determine Whether GHG Emissions Are ''Subject to Regulation''

In this action, we are allowing permitting authorities to establish a CO_2e-based GHG PAL, and in so doing, allowing them to add up to an amount equal to the emissions increase contained in the ''subject to regulation'' applicability threshold (currently 75,000 tpy CO_2e for an existing source) to the source's baseline actual emissions to set the actuals PAL level for GHGs. We are also allowing GHG PALs, either on a mass basis or a CO_2e basis, to serve as an alternative approach for determining whether GHG emissions are subject to regulation. That is, rather than applying the emissions increase tests currently contained in the ''subject to regulation'' definition, a source could demonstrate that GHG emissions are not ''subject to regulation'' by complying with a GHG PAL. Thus, compliance with a GHG PAL would be used as an alternative approach for determining that a project neither causes GHG emissions to be subject to regulation, nor causes the source to have a major modification.

With respect to the subject to regulation determination, we believe that it is necessary to allow GHG PALs to be used as an alternative provision for making this determination, because failing to do so would negate the flexibility we wish to achieve by revising GHG PALs. This is because without these regulatory revisions, sources would still be required to monitor individual emissions changes using the procedures in 40 CFR 52.21(b)(49) to determine whether a project causes GHG emissions to be ''subject to regulation.'' If we do not allow GHG PALs to be used to determine whether GHGs are subject to regulation, these determinations would use procedures that rely on an emissions-unit-by-emissions-unit analysis and a shorter contemporaneous period to evaluate net emissions changes, neither of which are required under a PAL. This would undermine the very benefits the PAL is intended to provide, such as clarity, regulatory certainty and operational flexibility. We believe that the enhanced recordkeeping, reporting and monitoring associated with a PAL, and the environmental benefits resulting

from a PAL, warrant extension of the alternative applicability provisions to ''subject to regulation'' determinations to assure that the GHG PAL provides the intended flexibility to sources.

With respect to extending the PAL regulations to allow GHG limits to be set on a CO_2e basis, we also believe these changes provide PALs to be used for GHGs in a manner consistent with the Tailoring Rule and the purpose of the PAL program. When we originally proposed the Tailoring Rule, we proposed to include applicability thresholds within the definitions of major stationary source and major modification, based on emissions of CO_2e. We also originally proposed to establish a CO_2e-based significant emissions rate. However, in the final rule, we changed our regulatory approach and instead included these applicability thresholds within the ''subject to regulation'' definition, and we did not revise the definition of significant to include a CO_2e-based emissions rate. We did so, in part, because we intended this change in regulatory structure to facilitate more rapid adoption of the rules by permitting authorities. Nonetheless, we also explained that we intended the definition of ''subject to regulation'' to function in tandem with the definitions of ''major stationary source'' and ''major modification'' to determine whether a given project triggers PSD preconstruction permit requirements. 75 FR 31582 June 3, 2010. That is, if a source emits GHG emissions at a level that causes the emissions to become ''subject to regulation,'' that same level of emissions increase will likely cause the source to be a major stationary source and to trigger PSD requirements as a major modification. Since the PAL program for non-GHG pollutants allows actuals PAL levels to be set by adding up to the amount of the emissions that would be allowed before a project triggered PSD requirements as a major modification, we think the PAL program for GHGs should apply similarly. Accordingly, since the CO_2e-based emission increase contained in the second part of the ''subject to regulation'' definition works in tandem with the ''major modification'' provision to determine whether PSD applies, we are amending the regulations so that a CO_2e-based GHG PAL can be established by adding up to an amount equal to the CO_2e emissions increase defined as ''significant'' for the purposes of 40 CFR 52.21(b)(49)(iii) at the time the PAL permit is being issued (currently, 75,000 tpy CO_2e) to the source's baseline actual emissions.

In our proposed Tailoring Rule, we noted that, in rare instances, there may be an exception to the general principle that a GHG source exceeding the proposed 75,000 tpy CO_2e significant emissions threshold for major modification applicability would also exceed the statutory mass applicability thresholds for PSD, namely if a source emits very small amounts of a particular GHG that carries a very large global warming potential. 74 FR 55330 October 27, 2009. We noted our concern that the proposed rule could cause such sources, whose mass emissions do not meet the major stationary source tpy threshold, to nonetheless be regulated under the permit programs. When we finalized the Tailoring Rule using the subject to regulation approach, we resolved this concern by retaining both a mass-based threshold and a CO_2e-based threshold. Our intent in retaining both thresholds was to assure that there was no source with GHG emissions that were subject to PSD that would not otherwise meet the statutory criteria for treatment as a major stationary source.

This same regulatory structure can create the opposite effect for sources operating under a GHG PAL. Instead of providing GHG PAL sources with the ability to use either threshold to show that they are not undertaking a major modification and that major NSR does not apply, sources must monitor both thresholds to prove this outcome under the current rules. This is because a mass-based GHG PAL cannot assure that there is no increase in CO_2e tpy GHG. Since the Tailoring Rule requires a source to determine whether a specific action would increase the GHG emissions by a certain amount that would make them subject to regulation for PSD permitting purposes, setting a CO_2e-based GHG PAL based on the increase identified in the Tailoring Rule thresholds will require that the source does not exceed that amount and thus will insure that changes at the source would not cause an increase in GHGs emissions in an amount that would be subject to regulation and thus insures that they are not subject to PSD permitting. In addition, since the Tailoring Rule and the existing PSD regulations require similar calculation of a source's emissions to determine whether a major modification triggers PSD permitting requirements for GHGs, compliance with a mass-based PAL, which as explained earlier will not allow any increase above baseline and thus does not result in a significant emissions increase, will also insure that a source with a mass-based GHG PAL does not trigger those requirements. Expanding the GHG PAL program to allow GHG PALs to be used as an alternative method of assuring that any changes at the source are neither ''subject to regulation'' nor major modifications resolves this issue, making GHG PALs function more like PALs for non-GHG pollutants.

E. Can a GHG source that already has a mass-based GHG PAL obtain a CO_2e-based PAL?

In the Step 3 proposal, we proposed to add transition provisions to the PAL regulations that would allow a GHG source that has a mass-based GHG PAL to convert to a CO_2e-based GHG PAL once, at the source's option, and if agreed to by the permitting authority. However, public comments indicate that there is no pressing need for such a transition provision at this time. As a result, we are not finalizing that segment of the proposal at this time. We are also not aware of any mass-based PALs that have been issued or are being reviewed by any permitting authorities that may need such transition provisions. If the need for such a transition provision arises in the future; we can address it as part of our future streamlining actions. Streamlining continues to be a key element to our phased-in approach to GHG permitting and we fully intend to move forward expeditiously with developing additional streamlining approaches.

VII. Comment and Response

In this section, we briefly summarize and respond to some key comments we received during the comment period. We describe in detail these and other comments as well as our responses in the Response to Comments document to this rule, which can be found in the docket for this rulemaking under Docket No. EPA–HQ–OAR–2009–0517.

A. Thresholds for GHGs

We received dozens of comments, including 90 from individual citizens, on the proposed Step 3 rulemaking. The majority of the commenters other than individual citizens were from industry, and most of these comments supported the proposal not to lower the GHG thresholds. Some of these commenters made clear that they supported maintaining these applicability thresholds only if the DC Circuit upholds the Tailoring Rule against the current legal challenges and only as long as the EPA requires GHG permitting under PSD. Reasons supporting not lowering the Step 1 and 2 thresholds included the lack of permitting authorities' ability to fully implement the program at (or closer to)

statutory applicability thresholds, the lack of implementation of effective permit streamlining measures at this time and the inability of sources to cope with regulatory burdens. In addition, several state and local agency commenters supported the current thresholds, citing the need for increased resources, a large learning curve and little incremental air quality benefit in the control of GHGs. We appreciate these comments, and in some cases they provided additional information concerning state permitting administration and possible reasons for the less-than-expected numbers of permit applications that we have incorporated into our rationale. Two environmental advocacy organization commenters, one of which consisted of a group of national organizations, opposed the proposal, and we discuss their comments in detail immediately below.

Environmental advocacy organization commenters stated that for the EPA to justify not lowering the current Tailoring Rule thresholds, ''the doctrine of administrative necessity requires that EPA provide evidence of continuing administrative impossibility,'' and therefore the EPA must provide data demonstrating that lowering thresholds would create administrative impossibilities. In addition, these commenters raised concerns about some of the specific aspects of the three criteria. For example, with respect to the criterion of whether states have had the time to increase their permitting resources, the commenters cautioned that the EPA should not ''attempt to rely on a decision by one or more state legislatures to underfund CAA programs as evidence of 'administrative necessity.' ''

In addition, the environmental advocacy organization commenters stressed that the actual permitting activity has been much less than the EPA's methodology estimated, and stated, ''[w]here estimates of permitting burdens conflict with actual experience, the agency must update its methods for assessing administrative loads based on the actual experience of permitting agencies to date.'' The commenters stated that the EPA's claims that macro-economic fluctuations were the cause of the unexpectedly low level of permitting could not be supported. One of the commenters further stated that the EPA could not rely on the three criteria it identified to justify maintaining the thresholds because ''[t]hese criteria are pertinent only in the face of evidence that the permitting demand continues to exceed capacity by a significant amount * * * EPA's current record does not so demonstrate.'' This commenter asserted that in the Step 3 proposal, the ''EPA has not provided sufficient justification for its conclusion that the permitting load faced by permitting agencies warrants maintenance of the current thresholds for the period covered by Step 3. While maintenance of the current applicability thresholds for GHG emissions may be justified by a record demonstrating continued administrative necessity, the EPA has not yet provided sufficient evidence in its proposed action.'' This commenter concluded that the EPA ''may wish to consider a supplementary proposal or notice of data availability that ensures adequate and transparent notice to stakeholders with adequate opportunity to comment.'' The other commenter asserted that the limited amount of actual permitting means that the three criteria either are not required to have been met or in fact have been met. This other commenter concluded that the EPA was required to lower the thresholds.

1. Narrow Scope of Step 3

a. Summary

The EPA disagrees with the environmental advocacy organization commenters' views that in Step 3, the EPA must justify maintaining the current thresholds on grounds of administrative necessity. In brief, the structure of the Tailoring Rule's multi-step phase-in process makes clear that Step 3 is a narrow action designed to afford the EPA the opportunity to lower the Tailoring Rule thresholds shortly after promulgating the Tailoring Rule if certain specific events were to happen. Those events, which are reflected in the three criteria the EPA articulated as the basis for Step 3, concern improvement in state resources and expertise as well as the development of streamlining methods. Under these circumstances, it would not have been appropriate to wait several years, until the EPA completed the 5-year study and then promulgated Step 4, before lowering the thresholds. Importantly, Step 3 occurs too soon after the Tailoring Rule to permit a more fundamental review of the data and methodology underlying the EPA's estimates of permitting burdens. That more fundamental review, to the extent needed, could occur during the 5-year study and Step 4 that are required several years later, in 2015 and 2016, respectively. The terms of the Tailoring Rule regulatory provisions and the discussion in the rule's preamble concerning this phase-in approach—Step 3, the 5-year study and Step 4—as interpreted by the EPA, confirm the narrowness of Step 3. As a result, the EPA is authorized to proceed with Step 3 as we do in this rulemaking, which is by applying the three criteria to determine whether to lower the thresholds.

b. Discussion

Step 3 can be best understood when viewed in the overall context of the phase-in process. The following is the schedule that the EPA established in the Tailoring Rule for the phase-in process, including Step 3 and subsequent action:

June 3, 2010: Tailoring Rule is published in the **Federal Register**.
January 2, 2011: Step 1 takes effect.
July 1, 2011: Step 2 takes effect.
July 1, 2012: Title V permit applications are due for sources that become subject to Step 2.
July 1, 2012: The EPA completes Step 3.
July 1, 2013: Step 3 takes effect.
April 30, 2015: The EPA completes 5-year study.
April 30, 2016: The EPA completes Step 4.

40 CFR 52.22(b).

In the first instance, Step 3's narrowness is clear from its timing, so soon after Steps 1 and 2. In promulgating the Tailoring Rule, which included Steps 1 and 2, the EPA undertook a robust analysis of administrative necessity. This analysis included compiling several sets of data and developing a complex, multi-component methodology, all of which were fully vetted through the Tailoring Rule process.

The EPA scheduled Step 3 shortly after the promulgation of Steps 1 and 2. Under this schedule, the EPA would promulgate Step 3 on the same day as the close of the first full year that Step 2 would have been in effect. As noted, Step 3's purpose was to provide a vehicle for the prompt lowering of the thresholds if certain events occurred by that time—state resources or expertise increased significantly, or the EPA was able to streamline permitting—so as to avoid a delay of some 4 years until the promulgation of Step 4 before lowering the thresholds. The EPA never intended that Step 3 entail a broad review of the underlying data sets and methodology for assessing permitting burden. Step 3 is simply too soon after the promulgation of the Tailoring Rule, and too soon after Step 2, for the EPA to have acquired and evaluated sufficient information to be able to review and revise the data and methodology.

The narrowness of Step 3 is also clear from the EPA's description of it in the Tailoring Rule regulations and preamble. The regulations establish Step 3 in a paragraph entitled, ''Near-term

Action on GHGs,'' and describe it as follows: ''The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for PSD applicability.'' 40 CFR 52.22(b)(1). The Tailoring Rule preamble elaborated as follows:

> [The] EPA includes an enforceable commitment to undertake a notice-and-comment rulemaking that would begin with [a supplemental notice of proposed rulemaking] that we expect to be issued in 2011 and that we commit will be finalized in 2012. The notice will propose or solicit comment on further reductions in the applicability levels. This rulemaking will take effect by July 1, 2013 and therefore, in effect, constitute [sic: constitutes] Step 3. In this [Tailoring Rule] action, we are committing to a rulemaking for Step 3, but are not promulgating Step 3, because it is important to allow EPA and the permitting authorities to gain experience permitting sources under Steps 1 and 2, and to allow time to develop streamlining methods, before attempting to determine what would be the next phase-in levels for PSD and title V applicability.

75 FR 31572 June 3, 2010. As noted above, the preamble went on to explicitly identify three criteria for the EPA to evaluate in Step 3 to determine whether to lower the thresholds, which concerned progress in permitting authorities' acquiring resources and developing expertise, as well as the EPA's and the permitting authorities' progress in developing streamlining measures. 75 FR 31559 June 3, 2010. The EPA interprets these regulations and preamble discussion to make clear that the EPA designed Step 3 narrowly as an opportunity to lower the thresholds very soon after finalizing the Tailoring Rule, if PSD and title V implementation for GHGs was on track and if certain events were unfolding in a way that allowed permitting at a lower threshold. We note that courts grant an administrative agency the highest level of deference in interpreting the agency's own regulations. *Auer* v. *Robbins,* 519 U.S. 452, 461 (1997).

Our interpretation of the Step 3 provisions finds support by contrasting them with the provisions for Step 4. The regulations establish Step 4 in a paragraph titled, ''Further Study and Action on GHGs.'' 40 CFR 51.22(b)(2), 40 CFR 70.12(b)(2). Importantly, the regulations make clear that Step 4 is to be preceded by, and must be based on, an assessment—which we call the 5-year study—that must be completed by April 30, 2015. That study is to be wide-ranging: The regulations describe it as ''a study projecting the administrative burdens'' of regulating sources below the then-existing thresholds. 40 CFR 52.22(b)(2)(i), 40 CFR 70.12(b)(2)(i). The regulations go on to describe Step 4 as a rule that is ''[b]ased on the results of the study'' and ''address[es] the permitting obligations of such sources,'' and that must be finalized by April 30, 2016. 40 CFR 52.22(b)(2)(ii), 40 CFR 70.12(b)(2)(ii).

Step 4's provisions, along with its timing, make clear that it has a broader scope than Step 3. By the time of the 5-year study, several years of implementation of GHG permitting will have occurred, and as a result, the EPA will have a more robust set of data concerning various aspects of implementation and the EPA's methodology. As noted, in the study, the EPA must evaluate that data as appropriate and ''project[] * * * administrative burdens.'' The EPA must then conduct the Step 4 rulemaking based on the study. All this makes clear that Step 4 provides a greater opportunity for evaluating administrative necessity, as appropriate, but Step 3, in contrast, is designed more narrowly.

That Step 3 has a narrow scope is further made clear by reference to the separate provision in the Tailoring Rule regulations that under no circumstances will the EPA lower the thresholds below the 50,000/50,000 tpy CO_2e level before April 30, 2016. 40 CFR 52.22(b)(2)(iii), 40 CFR 70.12(b)(2)(iii). This provision means that the EPA would not lower the thresholds below those levels during Step 3. The environmental advocacy organization commenters did not comment that the EPA was free to disregard this limit in Step 3, and as a result, those commenters appeared at least implicitly to accept that this limit does constrain whatever action the EPA may take in Step 3. It is the EPA's interpretation that just as the EPA narrowed Step 3 by establishing the 50,000/50,000 tpy CO_2e floor, the EPA also narrowed the scope of Step 3 to be limited to the three criteria, described above. In addition, the presence of this 50,000/50,000 tpy CO_2e limit contradicts commenters' argument that the EPA should be required to make a new showing of administrative impossibility in Step 3. It would be illogical for the EPA to be required to conduct a new evaluation of administrative burdens and a new showing of administrative impossibility in Step 3 if the EPA had already decided that no matter what the evaluation of administrative burdens revealed, Step 3 could not result in thresholds below the 50,000/50,000 tpy CO_2e level.

The environmental advocacy organization commenters emphasize the imperatives of the administrative necessity doctrine, and we fully recognize those imperatives. We discussed the administrative necessity doctrine at length in the proposed and final Tailoring Rule preambles, and we concluded that the doctrine authorized us to promulgate the Tailoring Rule only on the basis that we would phase in the PSD and title V applicability thresholds as quickly as possible and as closely as possible to the statutory 100/250 tpy levels. But we are authorized to create a structure for this phase-in process to achieve the overall goal, and in doing so, we may design a particular step to achieve a particular effect. We designed Step 3 narrowly to provide an opportunity to adjust the thresholds soon after promulgating them if certain events transpired. This is consistent with, and could help assure the success of, the overall phase-in process. Contrary to the environmental advocacy organization commenters' comments, Step 3 does not necessarily entail a re-analysis of administrative burdens or a new showing of administrative impossibility simply because Step 3 is an action that the EPA is taking within an overall context that involves the administrative necessity doctrine.

2. The Three Criteria

The EPA disagrees with various comments by the environmental advocacy organization commenters concerning the specifics of the three criteria for lowering the Tailoring Rule thresholds. With respect to their comment on the criterion of state resources, we acknowledge their concern as to whether a state could in effect manipulate the first criterion in the manner they suggest by underfunding the state environmental agency. However, we apply this criterion on a nationwide basis, so that we examine whether the states taken as a whole have increased their resources. At proposal, we noted evidence that because of the recent economic downturn and slow recovery, state environmental agencies across the country have generally seen budget reductions. This includes agencies in states that have moved forward to regulate GHGs in other ways. Applying this criterion on a nationwide basis minimizes concerns about a particular state seeking to underfund its environmental agency.[21]

[21] We recognize that on a nationwide basis, state budget pressures have resulted from recent macroeconomic conditions, and that with ongoing economic growth, state budgets may be expected to increase. But at present, we remain concerned that on a nationwide basis, the capacity of state and local permitting authorities for GHG permitting may be less than what we expected at the time of the

Continued

3. Disparity Between Estimated and Actual Numbers of Permits

We recognize the disparity that the environmental advocacy organization commenters stress between the estimated and actual permitting. However, we disagree that this disparity obliges us to reconsider the Tailoring Rule data and methodology during Step 3. For the reasons described above, Step 3 has a narrow scope: it is limited to the three criteria and as a result, it does not entail a review of the underlying data and methodology.

a. No Re-Opening of Methodology

In addition, we made clear in the Step 3 proposal that we would not re-open the methodology in this rulemaking:

> [I]n this rulemaking, we are relying on the same methodology used in the Tailoring Rule to calculate administrative burdens, and we are not re-opening that methodology or soliciting comment on it. We are simply proposing action and soliciting comment on Step 3 of the phase-in approach.

77 FR 14255 March 8, 2012. We affirm here that we are not re-opening the data and methodology.

b. Reasons for Not Reconsidering Data Sets and Methodology

Although we are not re-opening the data and methodology, for the sake of completeness, we will respond directly to concerns expressed by the commenters. Even if we were prepared to re-open the data and methodology, we would conclude that notwithstanding the disparity commenters emphasize, they have not provided, and we do not have, sufficient information to be able to conduct a review and revision of the data and methodology at this time.

(1) Summary

In the Tailoring Rule, our analysis of administrative burden was rendered complex by the need to account for many different types of permitting activity. We had to rely on several different sources of data and we had to develop a complex and multi-component methodology, with numerous assumptions and estimates. The sources of data were the best available, the assumptions in the methodology were reasonable and, importantly, all were fully vetted through the Tailoring Rule process. No one commented that the data and methodology over-estimated the amount of permitting burden, and no one brought such a challenge after promulgation.

In this Step 3 rulemaking, environmental advocacy organization commenters pointed out the disparity between the expected and actual number of GHG permit actions, but they did not challenge any specific aspects of this data and methodology. Thus, it remains possible that at least part of the disparity is temporary, due to macro-economic conditions and other factors. Even if the disparity has occurred because the data and methodology do contain inaccuracies that yield an over-estimate of the number of GHG permits, such inaccuracies must be considered in the context of the overall administrative burden due to GHG permitting. This burden also entails the amount of per-permit processing costs and other components of permitting administration, such as minor source permitting. Therefore, even if we were to conclude that actual data show an overestimate in the number of GHG permits, we are not in a position at present to attempt to lower the applicability thresholds.

We have little information as to the amount of any overestimate in actual permits. Other information may suggest that we have not accounted for certain other components of permitting administration—such as additional synthetic minor source permitting—which points towards an under-estimate of GHG-related permitting burden. And most broadly, we may well receive new information over time concerning other aspects of our data sets and methodology that may point towards adjustments in overall permitting burden and, ultimately, in the applicable thresholds, even though at present, we cannot predict the direction and extent of those adjustments. As a result, attempting to make an adjustment at this time to permitting thresholds based on the current information concerning numbers of GHG permits would amount to a piecemeal approach that would create significant uncertainty for the permitting authorities and regulated community, and we decline to adopt it. For all these reasons, it would be premature to attempt to lower the permitting thresholds based on the partial information we have concerning numbers of GHG permits.

(2) Discussion

At the outset, it must be emphasized that in the Tailoring Rule, our analysis of administrative burden was rendered complex by the fact that there are many different types of sources (that is, many different types of industrial sources as well as commercial and residential sources), many different sizes of sources (that is, minor and major sources, and many sizes of major sources), two types of activity that trigger PSD (that is, new construction and modifications), two types of sources based on their association with the PSD and title V programs (that is, ''anyway'' sources that are subject to PSD and title V anyway due to their non-GHG emissions, and GHG-only sources for whom the PSD or title V requirements are triggered solely because of their GHG emissions) and two permitting programs (that is, PSD and title V). To estimate the administrative burdens associated with the full range of GHG permitting activity, we had to rely on several different sources of data concerning the amounts of PSD and title V permitting activity and a complex and multi-component methodology, which in turn included many assumptions and estimates. The data sets and methodology were fully vetted through the Tailoring Rule process. At proposal, no one commented that the data and methodology overestimated the amount of GHG permitting burden. On the contrary, stakeholders commented that the EPA had significantly underestimated the numbers of permits and per-permit costs. Based on those comments and the EPA's further analysis, the EPA revised its methodology to substantially increase the expected number of GHG permitting actions and the amount of time the permitting authorities would need to process some of them. Following promulgation of the Tailoring Rule, no one sought administrative reconsideration or a court challenge of the data and methodology.

Although environmental advocacy organization commenters have pointed out the disparity between the total number of expected annual permits, based on the EPA's methodology, and the total actual number, these commenters did not provide any specific information that casts doubt on any particular aspect of the data and methodology.

In the absence of such information, there are several possible explanations for the disparity. It is possible that the unexpectedly small amount of permit activity is at least in part a temporary phenomenon due, as discussed in the proposal, to prospective permittees having accelerated their applications to 2010 to avoid GHG PSD requirements, or, as noted above, to recent macro-economic conditions. In addition, industry commenters have stated because GHG permitting is still in its initial stage, some sources have taken a

Tailoring Rule, and that possible diminution of capacity at least partly offsets the less-than-expected number of permitting actions.

wait-and-see approach before undertaking new construction or modifications, and that has resulted in fewer permit applications. Another factor is the possibility that some of the smaller sources that have never before been subject to the PSD program, but that are now subject to GHG PSD permitting requirements, are unaware of their permitting obligations. Most generally, as we noted in the Step 3 proposal, some officials in several states have stated that they thought the pace of GHG permitting would increase above the pace observed in 2011. Even so, we recognize that it is also possible that some aspects of the data sets and methodology do contain inaccuracies that may point towards overestimation of the number of GHG permits. During the Tailoring Rule, we did acknowledge uncertainties in many aspects of the methodology, which were discussed in the primary technical support document that described the methodology.[22]

However, the possibility that we over-estimated numbers of GHG permits due to inaccuracies in the data or methodology must be considered in the context of the overall administrative burden due to GHG permitting. This burden entails not only (1) the number of GHG permits; but also (2) the amount of per-permit processing costs; and (3) other components of GHG permitting administration, which include minor source permitting, hiring and training, outreach and education as well as enforcement actions. Viewed in this context, it is clear that even if we were to conclude that actual data shows an overestimate in the number of GHG permits, we are not in a position at present to attempt to lower the applicability thresholds, as an environmental advocacy organization commenter urged.

There are several reasons: First, we do not know the amount of any overestimate, in light of the fact that at least some of it may be due to macro-economic conditions and other factors; and in addition, the information that we have concerning the number of GHG permits actually issued provides little insight into which of the many data points or assumptions and estimates in the methodology may have led to the overestimate. This means we do not have enough information to adjust the estimates of overall permitting burden or the applicable thresholds.

Second, the information concerning numbers of permits tells only part of the overall administrative-burden story. Over time, we may well receive other information that may suggest that our data sets and methodology do not account for certain components of permitting administration, which point towards an under-estimate of permitting burden. For example, our methodology does not account for the permitting burdens resulting from permitting synthetic minor sources that seek to avoid GHG requirements, staff hiring and training, public education and outreach to sources and enforcement. 75 FR 31571 June 3, 2010.

Third and most broadly, we must recognize that we may receive more information over time that may shed light on the accuracy of various aspects of our methodology. This is true not only for the numbers of permits that we estimate and other components of the GHG permitting program, but also for the estimates of the per-permit costs to the permitting authorities. For example, GHG-only sources have not been required to submit their Step 2 title V permit applications until July 1, 2012, and as a result, we have little actual information concerning numbers of title V permits or other aspects of title V permitting. As noted, to this point, little information has been provided to the EPA to specifically verify or call into question the many data sets or estimates and assumptions in the methodology. As a result, even if the EPA had sufficient information to conclude that specific aspects of its methodology contained inaccuracies that pointed in the direction of over-estimating administrative permit burden, that information would affect only part of overall administrative burden, and it would be premature to attempt to adjust the permitting thresholds based solely on that partial information. Soon thereafter, the EPA could acquire additional information indicating that other aspects of its methodology were also inaccurate, and that information would lead to calls for the EPA to continue to revise the data sets and methodology whenever additional information became available that pointed towards a different burden estimate and therefore a different threshold. Such a piecemeal approach would create significant uncertainty for the permitting authorities and regulated community, and we decline to adopt it.

We also disagree with another environmental advocacy organization's comment that the EPA should consider issuing ''a supplemental notice of proposed rulemaking or notice of data availability that ensures adequate and transparent notice to stakeholders with adequate opportunity to comment,'' in lieu of finalizing Step 3 at this time. Even if there is a basis to believe that the methodology for estimating PSD GHG permitting burden may be inaccurate, it is reasonable for the EPA to finalize at this time the Step 3 rulemaking as proposed, thereby determining not to lower the thresholds. This will maintain the schedule for action already established in the regulations promulgated during the Tailoring Rule. In particular, the EPA is already obligated to undertake the 5-year study, to be followed by Step 4, which will afford the opportunity to review and revise the data sets and methodology, as appropriate, on a schedule that can accommodate any need to gather and analyze data. Importantly, this schedule will also accommodate the development of GHG permitting under title V, including the collection and analysis of information concerning progress. This approach of conducting any necessary review during the 5-year study and Step 4 will avoid uncertainty concerning the timing of when the EPA may lower the thresholds.

The key to our decision to proceed at this juncture is the fact that under the regulations we promulgated during the Tailoring Rule, we are already obligated to undertake the 5-year study by April 30, 2015 and to finalize Step 4 by April 30, 2016. In the Tailoring Rule regulations, we described the study as ''a study projecting the administrative burdens'' of regulating sources below the then-existing thresholds, 40 CFR 52.22(b)(2)(i), and in the Tailoring Rule preamble we added to that description the following:

> In this action, EPA is also finalizing its proposal to commit to conduct an assessment of the threshold levels—to be completed in 2015, 5 years after this action—that will examine the permitting authorities' progress in implementing the PSD and title V programs for GHG sources as well as EPA's and the permitting authorities' progress in developing streamlining methods. We further commit to undertake another round of rulemaking—beginning after the assessment is done, and to be completed by April 30, 2016—to address smaller sources.

75 FR 31573 June 3, 2010. We went on to point out that the timing of the 5-year study and Step 4 was consistent with our development of streamlining methods, some of which would require rulemaking, and therefore would take several years. 75 FR 31573 June 3, 2010.

This schedule for the 5-year study and Step 4 rulemaking will also facilitate a

[22] ''Summary of Methodology and Data Used to Estimate Burden Relief and Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (March 2010), included as Attachment C to the ''Regulatory Impact Analysis for the Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Final Report'' (May 2010), Docket No. EPA–HQ–OAR–2009–0517–19161.

robust collection and review of data, as appropriate. In the Tailoring Rule, the EPA calculated the administrative burdens of GHG permitting based on data for (1) the numbers and types of PSD and title V GHG permitting actions—*e.g.,* new construction and modifications, ''anyway'' sources and GHG-only sources—and (2) the expected processing time for the different types of GHG permits. The sets of data that were available to us at the time of the Tailoring Rule—which remain the only data available to us—were the foundation for our calculations. If the reason why permit activity to this point has been lower than expected is due to inaccuracies in those data, then we will need to correct the data based on the actual experience of the permitting authorities.

Because GHG permitting is a new addition to the PSD program, we believe that we would need 2 full years (July 1, 2012 to June 30, 2014) of the above-described data about the GHG permitting, after the initial, ''start-up'' year (July 1, 2011 to June 30, 2012). Data from the initial year would be valuable, but because GHG permitting is new, the initial year may well have involved some inefficiencies and a learning curve. As a result, the initial year may not be considered to be representative of a permitting authority's normal administration of the permitting program. Moreover, we believe that 2 full years of data are necessary to accurately reflect representative operations, particularly since the program is new. For example, if we were to select the number of permits issued as a measure of permitting activity, that number may vary widely over a several-month period, and that could skew the total for a particular year, but that variability would have less of an impact over a 2-year period. We would expect to be able to collect this data from the 2-year period in time to complete the 5-year study that is due by April 30, 2015. Following the study, we would be able to conduct the Step 4 rulemaking by the required April 30, 2016 completion date.

We disagree with the suggestion from the environmental advocacy organization commenter that we consider issuing a supplemental notice of proposed rulemaking at this time, instead of finalizing Step 3. The commenter did not describe what information it expected could be obtained through a supplemental notice of proposed rulemaking. We see little value to such an action at this time. If the reason for the unexpectedly low level of permit activity is inaccuracies in our data sets or methodology, as the commenter suggests, then the best way to address that is through the 5-year study, as described. That process allows a robust review. If the problem turns out to be inaccuracies in the data set or methodology, we believe it is better to have the opportunity to collect a comprehensive set of data.

Another reason why we decline commenter's suggestion to delay completing Step 3 and issue a supplemental notice of proposed rulemaking is that any such delay would put pressure on the time frame for the 5-year study and Step 4, in light of how quickly they follow Step 3, and that would create uncertainty for sources and state or local permitting authorities. We note that delaying completion of Step 3 and the final action we take on Step 3 in this rulemaking both have the same effect, which is to leave in place the Step 2 thresholds. Completing Step 3 now allows us to remain on track for the 5-year study and Step 4, as prescribed in the regulations. We think it is unlikely that delaying completion of Step 3, as commenters suggest, would lead to a lowering of thresholds sooner than Step 4 because we do not believe the information collected could be sufficiently robust to serve as the basis of lowering the thresholds.

In summary, we recognize the environmental advocacy organization commenters' concerns that there is a disparity between the estimates of permits issued and the actual numbers of permits issued to date. If this disparity persists, it will deepen concerns about whether the Tailoring Rule data sets or methodology overestimated permitting burden. However, we also recognize other indications that suggest that our methodology may have under-estimated permitting burden in other respects, and we also recognize that to this point, with the first full year of Step 2 only just now concluding, we do not have any more information than we had when we promulgated the Tailoring Rule about many aspects of our data sets and methodology that we have acknowledged entail uncertainty. By the same token, the great majority of title V permitting activity is only now just about to begin, and therefore we have little information about it. Title V permitting activity is important for purposes of not just title V permitting burdens but also PSD permitting burdens because permitting authorities generally administer the two programs in close relation to each other.

Accordingly, we intend to collect information concerning recent, current and future permitting activity in the states. We also intend to review information available to us from other sources, such as the Greenhouse Gas Mandatory Reporting Rule. Our goal would be to collect data that would help us analyze how the various estimates in our methodology vary from actual experience and how we can refine our analysis. With this approach, as we conduct the 5-year study (due to be completed by April 30, 2015), we would have data concerning permitting activity over both (1) the 2-year period when Step 2 will have been in full swing (July 1, 2012 to June 30, 2014), as well as (2) the earlier start-up period (January 2, 2011 to June 30, 2012).

If we find that a significant disparity between estimated and actual numbers of permit actions has persisted, or if significant disparities have become apparent between other aspects of our methodology and actual permitting experience, we would expect to address those disparities and the relevant aspects of our methodology in the 5-year study. In this event, in Step 4, we would review and revise our data and methodology as appropriate. Based on that review and revision, we would review and revise, as appropriate, the administrative burden estimates and the applicability thresholds that are based on those burden estimates.

B. Plantwide Applicability Limitations for GHGs

We received dozens of comments, including many from the regulated community and individual permitting authorities, on the proposed changes to the PALs provisions to better address GHGs. As explained above, we are providing a general summary of those comments, as well as providing responses to a few key comments in this section. We discuss the comments received and our responses in more detail in the Response to Comments document that appears in the docket for this final rule.

As a general matter, many commenters on the proposal expressed general support for the concept of GHG PALs, although some had misgivings about some aspects of the proposal. Supporters indicated that GHG PALs can streamline PSD permitting and reduce administrative burden for some sources, and most thought that the Minor Source Approach would be more beneficial and less burdensome than the Major Source Opt-In Approach. Some comments stated that GHG PALs will have advantages, including leading sources to minimize emissions to create room for later expansion, providing certainty for planning purposes, helping address changing market conditions and

reducing overall workload over the term of the permit. Several commenters stated that PALs for GHGs would be consistent with the treatment of other regulated NSR pollutants in the PSD programs. Other commenters indicated that using GHG PALs as an alternative for determining whether GHGs are subject to regulation and whether a project is a major modification for purposes of permitting is appropriate, and one elaborated that use of PALs will provide assurance that GHGs are not subject to regulation and will not trigger a major modification. On the other hand, several commenters generally opposed the GHG PAL proposal, stating that they do not believe that the EPA had provided an appropriate basis for changing the existing PAL program to address GHGs or that such changes were necessary. One commenter stated that the GHG PAL proposal offers little streamlining and only complicates permitting.

While we did not identify PALs as a viable streamlining technique for GHG sources in the Tailoring Rule, since we finalized that rule, we have recognized that plant-wide limitations could be designed in a way that would be useful for easing administration of GHG permitting and are adopting changes to the existing PAL regulations to address the unique PSD applicability issues associated with GHGs. After reviewing the comments received, we believe finalization of the changes to allow permitting of GHG PALs using the Minor Source Approach and on a CO_2e basis, including the option to use the CO_2e-based applicability thresholds provided in the subject to regulation definition in setting the PAL, will provide for better implementation of PALs for GHGs, is consistent with the approach to GHG permitting described in the Tailoring Rule and thus can play a relevant role in our strategy for developing streamlining options for permitting authorities to help ease the administrative burdens associated with GHG permitting for sources and permitting authorities alike. To the extent that some commenters oppose the use of PALs generally, we note that use of PALs as an alternative NSR applicability mechanism and the basic elements of PAL permits have already been upheld. *New York* v. *EPA,* 413 F.3d 3, 36–38 (D.C. Cir. 2005). The changes the EPA is finalizing to make implementation of that mechanism more useful as applied to GHGs are consistent with that decision, as well as the Tailoring Rule. Aside from the specific GHG-based revisions to the PAL provisions that the EPA is promulgating in this action, the EPA did not seek comment on, or otherwise re-open the existing PAL provisions, so any comments on non-GHG PAL-related issues are outside the scope of this rulemaking.

Many commenters (including commenters that both supported and opposed GHG PALs) stated that specific regulatory text for GHG PALs must be made available to allow for effective and meaningful comment on the proposal. Many of these commenters indicated that proposed GHG PAL language must be subject to notice and comment rulemaking before the EPA can finalize the GHG-specific changes to the PAL provisions, and some stated that the description in the proposal was insufficient to provide notice of the intended changes to the PAL regulations. Commenters stated that the EPA should issue a re-proposal for the GHG PAL revisions and include proposed regulatory text for public notice and comment. Other commenters, however, indicated that the PAL provisions should be finalized as soon as possible.

The EPA disagrees with the comments arguing that the EPA must provide notice-and-comment of specific regulatory text for its proposed GHG PALs changes before taking final action. The EPA notes that the CAA provisions contained in section 307, which govern rulemakings such as this, do not explicitly require the Agency to propose specific regulatory text as part of that process. In addition, the Administrative Procedure Act (APA) requires simply that ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' be included in a notice of proposed rulemaking. We believe that the notice and opportunity for comment provided for the GHG PALs proposal was sufficient to satisfy the requirements of the APA and CAA, and as explained below, we believe that we have provided adequate notice of the changes we are making to the PAL provisions to give a meaningful opportunity for comment on those changes.

In the Step 3 proposal, we described the various changes we were proposing in detail (including a description of the Minor Source Approach that we are finalizing today), and included a description of how we intended to extend PALs to GHGs on a CO_2e basis and a description of how we proposed to allow the use of PALs to determine whether GHG emissions are subject to regulation. 77 FR 14239 March 8, 2012. The Step 3 proposal also gave notice that we would revise a number of existing regulatory provisions to implement the approach selected. 77 FR 14244 March 8, 2012. In addition, we highlighted specific provisions of the PALs that we proposed to change and explained how we proposed to change those provisions. 77 FR 14244 March 8, 2012. For instance, we explained that for the Minor Source Approach, we proposed to revise the PAL applicability provisions in 40 CFR 52.21(aa)(1) to include GHG-only sources. *Id.* We further explained that we proposed to change the ''subject to regulation'' definition at 40 CFR 52.21(b)(49) and the PAL applicability section in 40 CFR 52.21(aa)(1) to indicate that a source that complies with a GHG PAL will not be ''subject to regulation'' for GHGs. *Id.* In addition, we explained that we proposed to revise 40 CFR 52.21(aa)(6) to allow PALs issued on a CO_2e basis to include the 75,000 tpy CO_2e emissions increase from the applicability thresholds, so that amount could be added to baseline actual emissions in setting the level of the PAL. *Id.* While we are making GHG-specific revisions to a number of other regulatory provisions in the PAL regulations, these changes simply implement the same regulatory revisions that we described repeatedly in the proposal—*i.e.,* making GHG PALs available on a CO_2e and mass basis, allowing a CO_2e-based PAL to include an emissions increase based on Tailoring Rule thresholds and the Minor Source Approach. Although the proposal did not list every specific provision we are revising in this final rule, each of these changes has the effect of implementing the GHG PAL approach described in the proposal and many of those changes are fairly small (for example, inserting ''GHG-only source'' to provisions that currently list only ''major stationary source''). Accordingly, our proposal provided sufficient information on the regulatory changes that we are finalizing in this action that allowed for public notice and comment.

We further note that the comments raising concerns about the adequacy of the notice for the GHG PAL revisions did not identify any particular aspect of the revisions that we are finalizing in this action that were not adequately explained in the proposal to allow for comment. In fact, despite the general notice concerns raised by commenters, many commenters did provide detailed comments on our proposed changes to the PAL provisions. We also note that while one comment indicated that the description of the proposed conversion from a mass-based PAL to a CO_2e-based PAL was too opaque for meaningful comment, that comment is not relevant

to this final action because we are not taking action on that proposed change.

For these reasons, we believe that we have provided sufficient notice and opportunity for comment on the revisions to the regulatory provisions for GHG PALs that we are adopting in this action.

A number of commenters also requested that the EPA provide clarification that the proposed changes to address GHG PALs in the federal regulations would not impact existing state authority to issue PAL permits for GHG emissions or existing GHG PAL permits that might have already been issued. In this action, we are finalizing revisions to certain sections of the federal regulations governing the issuance of permits pursuant to federal authority at 40 CFR 52.21, in particular the provisions relating to PALs at 40 CFR 52.21(aa) and provisions relating to the definition of ''subject to regulation'' at 40 CFR 52.21(b)(49). These provisions govern permits issued pursuant to federal authority, and, accordingly, these changes would only affect permits issued under federal authority *(i.e.,* those issued by the EPA or a delegated state or local agency). We do not intend these changes to 40 CFR 52.21 to affect existing state authority to issue PAL permits, and nothing in this action would require permitting authorities to take any action with respect to their existing PAL regulations or any existing PAL permits. We also note that these revisions are not minimum program requirements that must be adopted by states into their EPA-approved SIP PSD permitting programs. Accordingly, this final rule does not adopt these changes into the existing PAL provisions contained in 40 CFR 51.166, but nothing in this action is intended to restrict states from adopting these, or similar, changes into their SIP-approved PAL program if they choose to do so. Moreover, to the extent that states with existing PAL permitting programs have interpreted their PAL provisions to allow PAL permits to be issued on a CO_2e basis and for a PAL to be set at a level that reflects baseline actual emissions plus a 75,000 tpy CO_2e emissions increase, the changes that the EPA is making to the PAL regulations in 40 CFR 52.21 are not intended to change those existing state interpretations. Accordingly, the changes that the EPA is finalizing to address GHG PALs in the federal regulations do not, as a general matter, impact existing state authority to issue PAL permits for GHG emissions or existing GHG PAL permits that might have already been issued.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule will not change the existing GHG permitting thresholds, and therefore will not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The provisions for GHG PALs, which have previously been approved by OMB, will have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit will be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. In addition, the OMB has previously approved the information collection requirements contained in the existing regulations for the NSR and title V programs under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 to the NSR program and OMB control numbers 2060–0243 and 2060–0336 to the title V program (40 CFR part 70 and part 71 components, respectively). The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

The final rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on any sources (including small entities) to obtain PSD or title V permits or on any permitting authorities (including small entities, if any) to issue such permits. The final provisions for GHG PALs could have the effect of reducing permitting burden on all entities, including small entities, in that the burden associated with obtaining or issuing a PAL permit could be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Moreover, the decision of any source (including small entities) to request a GHG PAL and the decision of any permitting authority (including small entities) to either adopt the GHG PAL regulations or issue a GHG PAL are completely voluntary. No source is required to seek a PAL and no permitting authority is required to issue a PAL, so there is no requirement for any entity (including a small entity) to use these rules if it believes the GHG PAL would not relieve burden. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. The final rule will not change the existing GHG permitting thresholds, and

therefore will not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. Moreover, the decisions of state, local and tribal governments to adopt the GHG PAL provisions generally and to issue a GHG PAL to any specific permitting action are completely voluntary. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted previously, the effect of the final rule would be neutral or relieve regulatory burden.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule would maintain the existing structure of the PSD and title V programs and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government. In addition, the final rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on state permitting authorities to issue PSD or title V permits or such permits. The provisions for GHG PALs will have the effect of reducing permitting burden in that the burden associated with issuing a PAL permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). There are no tribal authorities currently issuing major NSR permits, one tribe is implementing a title V program based on a delegation agreement under 40 CFR part 71 and one tribe has recently obtained approval of title V program under 40 CFR part 70. However, the final rule would not change the existing GHG permitting thresholds, and therefore will not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The provisions for GHG PALs will have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The final rule would not change the existing GHG permitting thresholds, and therefore would not affect the universe of sources subject to permitting.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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). This action is effective on August 13, 2012.

L. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by September 10, 2012. 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. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

Section 307(d)(1)(J) specifies that the provisions of section 307(d) apply to ''promulgation or revision of regulations under [part] C of title I (pertaining to prevention of significant deterioration of air quality and protection of visibility).'' This section clearly subjects the portions of this action that pertain to PSD to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' Pursuant to this section, the Administrator determines that this entire action is subject to the provisions of section 307(d). This determination allows for uniform treatment for all aspects of this action.

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (1) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (2) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule is ''nationally applicable'' within the meaning of section 307(b)(1). This rule promulgates PSD regulations that are applicable in every state in which the EPA is the PSD permitting authority, and takes final action that is relevant for EPA-approved SIP PSD programs in the rest of the states, as well as EPA-approved title V programs in all states. For the same reasons, the Administrator also is determining that this action is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to all judicial circuits because PSD and/or title V programs in all areas across the country are affected by today's final action. In these circumstances, section 307(b)(1) and its legislative history call for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of this rule must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 114, 165, 169, 301, 501 and 502 of the CAA as amended (42 U.S.C. 7401, 7414, 7475, 7579, 7601, 7661 and 7661a).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

Dated: June 29, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as set forth below.

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 52.21 is amended by:
■ a. Revising paragraph (b)(49)(i);
■ b. Revising paragraph (aa)(1)(i);
■ c. Revising paragraph (aa)(1)(ii) introductory text;
■ d. Revising paragraphs (aa)(1)(ii)(*b*) and (*c*);
■ e. Adding paragraph (aa)(1)(ii)(*d*);
■ f. Revising paragraph (aa)(1)(iii);
■ g. Revising paragraphs (aa)(2)(i) and (iii);
■ h. Adding paragraph (aa)(2)(iv)(*c*);
■ i. Revising paragraphs (aa)(2)(v), (viii), (ix), (x) and (xi);
■ j. Adding paragraphs (aa)(2)(xii), (xiii), (xiv) and (xv);
■ k. Revising paragraph (aa)(3) introductory text;
■ l. Adding paragraph (aa)(3)(iv);
■ m. Revising paragraph (aa)(4)(i) introductory text;
■ n. Revising paragraphs (aa)(4)(i)(*a*), (*d*) and (*g*);
■ o. Revising paragraph (aa)(5);
■ p. Revising the first sentence of paragraph (aa)(6)(i);
■ q. Adding paragraph (aa)(6)(iii);
■ r. Revising paragraph (aa)(7) introductory text;
■ s. Revising paragraphs (aa)(7)(i), (iii), (v), (vi) and (vii);
■ t. Adding paragraph (aa)(7)(xi);
■ u. Revising paragraph (aa)(8)(ii)(*b*)(*2*);
■ v. Revising paragraph (aa)(9)(i)(*a*);
■ w. Revising paragraphs (aa)(9)(iv) and (v);
■ x. Revising paragraphs (aa)(10)(i) and (ii);
■ y. Revising paragraphs (aa)(10)(iv)(*c*)(*1*) and (*2*);
■ z. Revising paragraph (aa)(11)(i) introductory text;
■ aa. Revising paragraphs (aa)(11)(i)(*a*) and (*b*);
■ bb. Revising paragraph (aa)(12)(i)(*a*);
■ cc. Revising paragraphs (aa)(14)(i)(*b*) and (*d*); and
■ dd. Revising paragraph (aa)(14)(ii) introductory text.

The revisions and additions read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) *Greenhouse gases (GHGs),* the air pollutant defined in § 86.1818–12(a) of this chapter as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (b)(49)(iv) through (v) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit containing the GHG PAL.

* * * * *

(aa) * * *

(1) * * *

(i) The Administrator may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO_2e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in paragraphs (aa)(1) through (15) of this section. The term ''PAL'' shall mean ''actuals PAL'' throughout paragraph (aa) of this section.

(ii) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets

the requirements in paragraphs (aa)(1) through (15) of this section, and complies with the PAL permit:

* * * * *

(*b*) Does not have to be approved through the PSD program;

(*c*) Is not subject to the provisions in paragraph (r)(4) of this section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

(*d*) Does not make GHGs subject to regulation as defined by paragraph (b)(49) of this section.

(iii) Except as provided under paragraph (aa)(1)(ii)(*c*) of this section, a major stationary source or a GHG-only source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) * * *

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(48) of this section) of all emissions units (as defined in paragraph (b)(7) of this section) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, *actuals PAL* means a PAL based on the baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of all emissions units (as defined in paragraph (aa)(2)(xiv) of this section) at the source, that emit or have the potential to emit GHGs.

* * * * *

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(23) of this section or in the Act, whichever is lower. For a GHG PAL issued on a CO_2e basis, *small emissions unit* means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2e basis defined as ''significant'' for the purposes of paragraph (b)(49)(iii) of this section at the time the PAL permit is being issued.

(iv) * * *

(*c*) For a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under paragraph (b)(49) of this section at the time the PAL permit is being issued.

(v) *Plantwide applicability limitation (PAL)* means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15) of this section.

* * * * *

(viii) *PAL major modification* means, notwithstanding paragraphs (b)(2), (b)(3), and (b)(49) of this section (the definitions for major modification, net emissions increase, and subject to regulation), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) *PAL permit* means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Administrator that establishes a PAL for a major stationary source or a GHG-only source.

(x) *PAL pollutant* means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(23) of this section or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv) of this section. For a GHG PAL issued on a CO_2e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit as defined in paragraph (aa)(2)(iii) of this section, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv)(*c*) of this section.

(xii) *GHG-only source* means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(1) of this section and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph (b)(49) of this section at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under paragraph (aa) of this section.

(xiii) *Baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under this section or by the permitting authority for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions* for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(*d*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by paragraphs (aa)(2)(xiii)(*b*) and (*c*) of this section.

(xiv) *Emissions unit* with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(*a*) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(*b*) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (aa)(2)(xiv)(*a*) of this section.

(xv) *Minor source* means any stationary source that does not meet the definition of major stationary source in paragraph (b)(1) of this section for any pollutant at the time the PAL is issued.

(3) *Permit application requirements.* As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the Administrator for approval:

* * * * *

(iv) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in paragraph (b)(1)(i)(*a*) and (*b*) of this section or a GHG-only source as defined in paragraph (aa)(2)(xii) of this section.

(4) *General requirements for establishing PALs.* (i) The Administrator is allowed to establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(*a*) through (*g*) of this section are met.

(*a*) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

* * * * *

(*d*) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

* * * * *

(*g*) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) of this section for each emissions unit under the PAL through the PAL effective period.

* * * * *

(5) *Public participation requirements for PALs.* PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through a procedure that is consistent with §§ 51.160 and 51.161 of this chapter. This includes the requirement that the Administrator provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Administrator must address all material comments before taking final action on the permit.

(6) * * *

(i) Except as provided in paragraph (aa)(6)(ii) and (iii) of this section, the plan shall provide that the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(48) of this section or, for GHGs, paragraph (aa)(2)(xiii) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. * * *

* * * * *

(iii) For CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in paragraph (aa)(2)(xiii) of this section) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as ''significant'' on a CO_2e basis for the purposes of paragraph (b)(49)(iii) at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The reviewing authority shall specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or state regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit.

(7) *Contents of the PAL permit.* The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (xi) of this section.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO_2e.

* * * * *

(iii) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

* * * * *

(v) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of paragraph (aa)(9) of this section.

(vi) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by paragraph (aa)(13)(i) of this section.

(vii) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12) of this section.

* * * * *

(xi) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under paragraph (b)(49) of this section as long as the source complies with the PAL.

(8) * * *

(ii) * * *

(*b*) * * *

(*2*) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source or GHG-only source under the State Implementation Plan; and

(9) * * *

(i) * * *

(*a*) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii) of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Administrator) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v) of this section, such distribution shall be made as if the PAL had been adjusted.

* * * * *

(iv) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(2) of this section.

(v) The major stationary source or GHG-only source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4) of this section, but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(*c*) of this section.

(10) * * *

(i) The Administrator shall follow the procedures specified in paragraph (aa)(5) of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Administrator.

(ii) *Application deadline.* A major stationary source or GHG-only source owner or operator shall submit a timely application to the Administrator to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

* * * * *

(iv) * * *

(*c*) * * *

(*1*) If the potential to emit of the major stationary source or GHG-only source is less than the PAL, the Administrator shall adjust the PAL to a level no greater than the potential to emit of the source; and

(*2*) The Administrator shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of paragraph (aa)(11) of this section (increasing a PAL).

* * * * *

(11) * * *

(i) The Administrator may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the provisions in paragraphs (aa)(11)(i)(*a)* through (*d*) of this section.

(*a*) The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(*b*) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

* * * * *

(12) * * *

(i) * * *

(*a*) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

* * * * *

(14) * * *

(i) * * *

(*b*) Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i) of this section.

* * * * *

(*d*) A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period.

* * * * *

(ii) *Deviation report.* The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

* * * * *

[FR Doc. 2012–16704 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2012–0286; FRL–9698–7]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; Gila River Indian Community

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific National Emission Standards for Hazardous Air Pollutants (NESHAP) to the Gila River Indian Community Department of Environmental Quality (GRIC) in Arizona. The preamble outlines the process that GRIC will use to receive delegation of any future NESHAP, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed GRIC's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting GRIC the authority to implement and enforce the unchanged NESHAP categories listed in this rule.

DATES: This rule is effective on September 10, 2012 without further notice, unless EPA receives relevant adverse comments by August 13, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0286, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *kay.rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA or the Act), authorizes EPA to delegate to state, local, or tribal air pollution control agencies, the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), Part 63, NESHAP for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as ''Subpart E''), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and Subpart E. To streamline the approval process for future applications, a state agency, local agency or tribe may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standard. If such demonstration is approved, then the requesting agency or tribe would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. 40 CFR 63.91(d)(2). However, EPA maintains the authority to withdraw its approval if the delegated agency or tribe does not adequately implement or enforce an approved rule or program. 40 CFR 63.96(b).

To be eligible to receive delegation to implement CAA programs, GRIC as an Indian Tribe must receive a Treatment as a State (TAS) determination from EPA pursuant to CAA section 301(d)(2) and EPA's implementing regulations in 40 CFR Part 49 (Tribal Authority Rule or ''TAR'' [1]). *See* 63 FR 7254 (February 12, 1998), as amended at 76 FR 23879 (April 29, 2011). In addition to the TAS eligibility determination, in order to be delegated authority to implement the NESHAP standards, GRIC agreed in a Memorandum of Agreement (2008 Delegation Memorandum) with EPA that it would: (i) Obtain the regulatory authority necessary to implement the standards by incorporating the CAA section 112 federal rules into tribal codes of regulation by reference; (ii) submit a letter to the Director of EPA Region IX's Air Division requesting delegation of the section 112 federal rule, including proof that GRIC has obtained the necessary regulatory authority to fully implement and enforce the section 112 rule for which it is seeking delegation; and (iii) receive approval from EPA to implement the requested standard. The details of this delegation mechanism are set forth in the 2008 Delegation Memorandum between GRIC and EPA.

On October 21, 2009, EPA determined that GRIC met the eligibility requirements set forth in section 301(d)(2) of the CAA and EPA's implementing regulations in the TAR, making it eligible for treatment as a state to implement four CAA programs, including the NESHAP standards under CAA section 112 (*see* letter from Laura Yoshii, Acting Regional Administrator, U.S. EPA Region IX to William Rhodes, Governor, Gila River Indian Community). EPA granted GRIC's request for a TAS eligibility determination based on our conclusion that the Tribe's application met the eligibility criteria in CAA section 301(d)(2) and the TAR, including the requirement to demonstrate that the Tribe has adequate resources and

[1] EPA previously titled these regulations as the Tribal Clean Air Act Authority, or ''Tribal Authority Rule'', but recently changed the name to better reflect the scope of authority for planning and management of air quality in Indian Country. (*see* 76 FR 23876, April 29, 2011). However, references to Part 49, Subpart A (49.1–49.50), such as here, are still referred to as the ''Tribal Authority Rule'', or ''TAR''.

authorities to implement and enforce the NESHAP under CAA section 112.

On November 10, 2008, GRIC informed EPA that it intended to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 rules into the GRIC Tribal Code by reference. On November 18, 2008, GRIC submitted a letter to the director of the Air Division for Region IX requesting delegation of several individual section 112 standards that had been incorporated by reference into the GRIC Tribal Code.

The final step in the delegation process occurs when EPA approves GRIC's formal delegation request for that standard. Today's action is an approval of GRIC's November 18, 2008 delegation request. The standards that are being delegated by today's action are listed in a table at the end of this rule.

II. EPA's Action

A. Delegation for Specific Standards

Based on our review of GRIC's request for delegation of various NESHAP, EPA has determined that the Tribe's request meets all of the requirements to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, EPA is granting GRIC the authority to implement and enforce the requested NESHAP. This delegation of authority will be effective on September 10, 2012. A table identifying the specific NESHAP that will be delegated to GRIC is shown at the end of this rule. Although GRIC will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state, local or tribal agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to GRIC.

In its November 18, 2008 request, GRIC included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR Part 63, Subpart D. These requirements apply to non-federal agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). State, local, or tribal agencies implementing the requirements under Subpart D do not need approval under section 112(l). If the non-federal agency does not have an approved permit program, then these requirements are carried out by EPA. GRIC currently does not have a federally approved permit program, therefore Subpart D will be administered by EPA. In the future, if GRIC receives federal approval for their permitting program, then GRIC will automatically be able to implement the requirements of Subpart D without the need to obtain an additional delegation from EPA. Because the authority to implement the requirements under Subpart D is directly conferred to approved permitting authorities without the need for delegation through CAA section 112(l), EPA is not taking action to delegate 40 CFR Part 63, Subpart D to GRIC.

GRIC also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that ''the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)'' (*see* 61 FR 68397, December 27, 1996). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that ''section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements'' (*see* 59 FR 26447, May 20, 1994). Therefore, state, local, or tribal agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B to GRIC.

B. Delegation Mechanism for Future Standards

Today's document serves to notify the public of the details of GRIC's procedure for receiving delegation of future NESHAPs. As set forth in the 2008 Delegation Memorandum, GRIC intends to incorporate by reference, into the GRIC Tribal Code, each newly promulgated NESHAP for which it intends to seek delegation. GRIC will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAP should do so at this time.

C. Public Comment and Final Action

As authorized in section 112(l)(5) of the Act, EPA is fully approving this delegation request because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously publishing a separate document that will serve as the proposal for this action. If we receive adverse comments by August 13, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 10, 2012 and no further action will be taken on the proposed rule. Please note that if EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and

therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves an eligible Indian tribe's request for delegation of authority to implement federal requirements through tribal law and imposes no additional requirements beyond those imposed by tribal law. Accordingly, the Administrator certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule approves an Indian tribe's request for delegation of authority to implement a federal program through pre-existing requirements under tribal law and does not impose any additional enforceable duty beyond that required by tribal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' EPA has concluded that this rule will have tribal implications in that it will have substantial direct effects on the Gila River Indian Community. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. EPA is approving GRIC's request for delegation of authority to implement the federal NESHAP at the request of the Tribe. Tribal law will not be preempted as GRIC incorporated the federal NESHAP it seeks to implement into Tribal Law on December 13, 2006. The Tribe has requested, and fully supports, our approval of this delegation request, which makes the Tribe's regulations incorporating the NESHAP federally enforceable.

EPA worked and consulted with officials of the GRIC early in the process of developing this program to permit them to have meaningful and timely input into its development. In order to administer the NESHAP, tribes must be determined eligible (40 CFR Part 49) for TAS for the purpose of administering these standards. During the TAS eligibility process, the Tribe and EPA worked together to ensure that the appropriate information was submitted to EPA. GRIC and EPA also worked together throughout the process of developing and adopting GRIC's regulations to implement the NESHAP. The Tribe and EPA also entered into a Memorandum of Agreement, which establishes procedures to facilitate delegation of authority to implement and enforce the NESHAP to GRIC and outlines the agencies' related responsibilities.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a tribal request to implement federal emission standards that apply within the exterior boundaries of the GRIC reservation, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule 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, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply to this rule. In reviewing requests for delegation of CAA authority, the EPA's role is to approve an eligible tribe's request, provided that it meets the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Tribe to use Voluntary Consensus Standards (VCS), the EPA has no authority to disapprove a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request, to use VCS in place of a submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: June 22, 2012.

Elizabeth Adams,

Acting Director, Air Division Region IX.

Therefore, 40 CFR chapter I is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Amend § 63.99 by revising the table in paragraph (a)(3)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(3) * * *

(i) * * *

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]	GRIC [5]
A	General Provisions	X	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]	GRIC [5]
H	Organic Hazardous Air Pollutants: Equipment Leaks.	X	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X	X
J	Polyvinyl Chloride and Copolymers Production	X	X	X		X
L	Coke Oven Batteries	X	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X	X
S	Pulp and Paper	X	X	X		X
T	Halogenated Solvent Cleaning	X	X	X	X	X
U	Group I Polymers and Resins	X	X	X	X	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	X	X	X	X	X
X	Secondary Lead Smelting	X	X	X	X	X
Y	Marine Tank Vessel Loading Operations					X
AA	Phosphoric Acid Manufacturing Plants	X	X	X		X
BB	Phosphate Fertilizers Production Plants	X	X	X		X
CC	Petroleum Refineries	X	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	X	X	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X	X
HH	Oil and Natural Gas Production Facilities	X	X	X		X
II	Shipbuilding and Ship Repair (Surface Coating)					X
JJ	Wood Furniture Manufacturing Operations	X	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X	X
LL	Primary Aluminum Reduction Plants	X		X		X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X	X	X		X
OO	Tanks—Level 1	X	X	X	X	X
PP	Containers	X	X	X	X	X
QQ	Surface Impoundments	X	X	X	X	X
RR	Individual Drain Systems	X	X	X	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X	X		X
TT	Equipment Leaks—Control Level 1	X	X	X		X
UU	Equipment Leaks—Control Level 2	X	X	X		X
VV	Oil-Water Separators and Organic-Water Separators.	X	X	X	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X	X		X
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X	X	X		X
YY	Generic MACT Standards	X	X	X		X
CCC	Steel Pickling	X	X	X		X
DDD	Mineral Wool Production	X	X	X		X
EEE	Hazardous Waste Combustors	X	X	X		X
GGG	Pharmaceuticals Production	X	X	X		X
HHH	Natural Gas Transmission and Storage Facilities	X	X	X		X
III	Flexible Polyurethane Foam Production	X	X	X		X
JJJ	Group IV Polymers and Resins	X	X	X	X	X
LLL	Portland Cement Manufacturing Industry	X	X	X		X
MMM	Pesticide Active Ingredient Production	X	X	X		X
NNN	Wool Fiberglass Manufacturing	X	X	X		X
OOO	Manufacture of Amino/Phenolic Resins	X	X	X		X
PPP	Polyether Polyols Production	X	X	X		X
QQQ	Primary Copper Smelting	X	X	X		X
RRR	Secondary Aluminum Production	X	X	X		X
TTT	Primary Lead Smelting	X	X	X		X
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X	X	X		X
VVV	Publicly Owned Treatment Works	X	X	X		X
XXX	Ferroalloys Production	X	X	X		X
AAAA	Municipal Solid Waste Landfills	X	X	X		X
CCCC	Manufacturing of Nutritional Yeast	X	X	X		X
DDDD	Plywood and Composite Wood Products	X	X	X		X
EEEE	Organic Liquids Distribution (non-gasoline)	X	X	X		X

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]	GRIC [5]
FFFF	Miscellaneous Organic Chemical Manufacturing	X	X	X		X
GGGG	Solvent Extraction for Vegetable Oil Production	X	X	X		X
HHHH	Wet-Formed Fiberglass Mat Production	X	X	X		X
IIII	Surface Coating of Automobiles and Light-Duty Trucks.	X	X			X
JJJJ	Paper and Other Web Coating	X	X	X		X
KKKK	Surface Coating of Metal Cans	X	X	X		X
MMMM	Miscellaneous Metal Parts and Products	X	X	X		X
NNNN	Large Appliances	X	X	X		X
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles.	X	X	X		X
PPPP	Surface Coating of Plastic Parts and Products	X	X			X
QQQQ	Wood Building Products	X	X	X		X
RRRR	Surface Coating of Metal Furniture	X	X	X		X
SSSS	Surface Coating of Metal Coil	X	X	X		X
TTTT	Leather Finishing Operations	X	X	X		X
UUUU	Cellulose Products Manufacturing	X	X	X		X
VVVV	Boat Manufacturing	X	X	X		X
WWWW	Reinforced Plastics Composites Production	X	X	X		X
XXXX	Tire Manufacturing	X	X	X		X
YYYY	Stationary Combustion Turbines	X	X	X		X
ZZZZ	Stationary Reciprocating Internal Combustion Engines.	X	X			X
AAAAA	Lime Manufacturing Plants	X	X	X		X
BBBBB	Semiconductor Manufacturing	X	X	X		X
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks.	X	X	X		X
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters.	X	X			X
EEEEE	Iron and Steel Foundries	X	X	X		X
FFFFF	Integrated Iron and Steel	X	X	X		X
GGGGG	Site Remediation	X	X	X		X
HHHHH	Miscellaneous Coating Manufacturing	X	X	X		X
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants.	X	X	X		X
JJJJJ	Brick and Structural Clay Products Manufacturing	X	X	X		X
KKKKK	Clay Ceramics Manufacturing	X	X	X		X
LLLLL	Asphalt Roofing and Processing	X	X	X		X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X	X		X
NNNNN	Hydrochloric Acid Production	X	X	X		X
PPPPP	Engine Test Cells/Stands	X	X	X		X
QQQQQ	Friction Products Manufacturing	X	X	X		X
RRRRR	Taconite Iron Ore Processing	X	X	X		X
SSSSS	Refractory Products Manufacturing	X	X	X		X
TTTTT	Primary Magnesium Refining	X	X	X		X
WWWWW	Hospital Ethylene Oxide Sterilizers		X	X		
YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities.		X	X		
ZZZZZ	Iron and Steel Foundries Area Sources		X	X		
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.		X	X		
CCCCCC	Gasoline Dispensing Facilities		X	X		
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources.		X	X		
EEEEEE	Primary Copper Smelting Area Sources		X	X		
FFFFFF	Secondary Copper Smelting Area Sources		X	X		
GGGGGG	Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium.		X	X		
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.		X	X		
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources.		X	X		
MMMMMM	Carbon Black Production Area Sources		X	X		
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds.		X	X		
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources.		X	X		
PPPPPP	Lead Acid Battery Manufacturing Area Sources		X	X		
QQQQQQ	Wood Preserving Area Sources		X	X		
RRRRRR	Clay Ceramics Manufacturing Area Sources		X	X		
SSSSSS	Glass Manufacturing Area Sources		X	X		

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCAQD [2]	PDEQ [3]	PCAQCD [4]	GRIC [5]
TTTTTT	Secondary Nonferrous Metals Processing Area Sources.		X	X		
VVVVVV	Chemical Manufacturing Industry—Area Sources		X			
WWWWWW	Area Source Standards for Plating and Polishing Operations.		X			
XXXXXX	Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.		X			
YYYYYY	Area Sources: Ferroalloys Production Facilities		X			
ZZZZZZ	Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.		X			
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing—Area Sources.		X			
BBBBBBB	Chemical Preparations Industry—Area Sources		X			
CCCCCCC	Paint and Allied Products Manufacturing—Area Sources.		X			
DDDDDDD	Prepared Feeds Manufacturing—Area Sources		X			

[1] Arizona Department of Environmental Quality
[2] Maricopa County Air Quality Department
[3] Pima County Department of Environmental Quality
[4] Pinal County Air Quality Control District
[5] Gila River Indian Community Department of Environmental Quality. This table includes the GRIC DEQ only for purposes of identifying all state, local, and tribal agencies responsible for implementing part 63 standards within the geographical boundaries of the State of Arizona and does not establish any state regulatory authority in Indian country.

* * * * *

[FR Doc. 2012–17031 Filed 7–11–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0758; FRL–9353–8]

Sulfentrazone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of sulfentrazone in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) and FMC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 12, 2012. Objections and requests for hearings must be received on or before September 10, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0758 is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0758 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 10, 2012. Addresses for mail and hand delivery of objections

and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0758, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 5, 2011 (76 FR 61647) (FRL–8890–5), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7890) by (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201–W., Princeton, NJ 08540. The petition requested that 40 CFR 180.498 be amended by establishing tolerances for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethylsulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on rhubarb at 0.2 parts per million (ppm); turnip, roots at 0.2 ppm; turnip, tops at 0.7 ppm; and sunflower subgroup 20B at 0.2 ppm; ''Tolerances with regional registrations'' in or on wheat, forage at 0.45 ppm (Pacific Northwest only); wheat, hay at 0.20 ppm (Pacific Northwest only); wheat, grain at 0.20 ppm (Pacific Northwest only); wheat, straw at 1.4 ppm (Pacific Northwest only); and cowpea, succulent at 0.15 ppm (Tennessee only). In addition, the petition requested to amend the current tolerances in 40 CFR 180.498 in or on bean, lima, succulent at 0.15 ppm by removing the tolerance from the table in Section (a)(2) and adding the tolerance to Section (c) *Tolerances with regional registrations*. Upon approval of the aforementioned tolerance on the sunflower subgroup 20B, the petition additionally proposed to remove the established tolerance in or on the raw agricultural commodity sunflower, seed at 0.2 ppm. That notice referenced a summary of the petition prepared by FMC, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of July 6, 2011 (76 FR 39358) (FRL–8875–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7838) by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. The petition requested that 40 CFR 180.498 be amended by establishing tolerances for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethylsulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on crop group 10–10 citrus fruit at 0.15 ppm; crop group 13–07 berry and small fruit at 0.15 ppm; crop group 14 tree nut and pistachio at 0.15 ppm; and crop group 18 non-grass animal feed (forage, fodder, straw, and hay): Alfalfa, forage at 5 ppm; alfalfa, hay at 20 ppm; alfalfa, seed at 3 ppm; clover, forage at 5 ppm; clover, hay at 20 ppm; and clover, seed at 3 ppm. That notice referenced a summary of the petition prepared by FMC, the registrant, which is available in the docket, *http://www.regulations.gov*. A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the tolerance levels for some commodities and is not establishing tolerances on alfalfa forage, hay, and seed and clover forage, hay, and seed. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sulfentrazone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sulfentrazone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based on the results of acute toxicity studies in rats, sulfentrazone was classified as having low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is a mild eye

irritant, but not a dermal irritant or sensitizer. Subchronic and chronic toxicity studies in rats, mice and dogs identified the hematopoietic system as the target of sulfentrazone. Protoporphyrinogen oxidase inhibition in the mammalian species may result in disruption of heme synthesis. In these studies, disruption of heme synthesis was observed at about the same dose levels across species, except in the case of mice, where the effects were seen at a slightly higher dose. The hematotoxicity occurred around the same dose level for short- through long-term exposure without increasing in severity.

In the oral and dermal rat developmental toxicity studies, decreased fetal body weights and reduced/delayed skeletal ossifications were noted at doses that were not maternally toxic. In rabbits, developmental effects such as decreased pup viability were observed at a maternally toxic dose (clinical signs, abortions and decreased body weight gains). In the 2-generation reproduction study in rats, offspring effects such as decreased body weights and decreased litter survival were observed at a maternally toxic dose (slightly decreased body weight gain).

In the acute neurotoxicity study, an increased incidence of clinical signs (staggered gait, splayed hind limbs, and abdominal gripping), changes in functional observation battery (FOB) parameters, and decreased motor activity were observed; however, complete recovery was observed within 14 days and there was no evidence of neuropathology. In the subchronic neurotoxicity study, clinical signs of toxicity, increased motor activity, and/or decreased body weights, body-weight gain, and food consumption were observed. There was no evidence of neuropathology in either study. A published, non-guideline developmental toxicity study in the rat (de Castro, *et al.,* 2007) failed to demonstrate conclusively developmental neurotoxicity and contains several shortcomings that limit its use for regulatory purposes. Further, the reported offspring effects involving measures of physical and reflex development are likely secondary effects reflective of the poor general state of the offspring, as reported in the rat 2-generation reproductive toxicity study at similar dose levels.

No systemic toxicity was seen via the dermal route up to the limit dose in a 28-day dermal toxicity study in rabbits.

Preliminary review of a recently submitted 28-day rat immunotoxicity study suggests that sulfentrazone does not directly target the immune system; and, there is no evidence of immunotoxicity in the rest of the toxicity database for sulfentrazone.

Carcinogenicity studies in rats and mice showed no evidence of increased incidence of tumor formation due to treatment with sulfentrazone. Therefore, the EPA classified sulfentrazone as ''not likely to be carcinogenic to humans.'' The available mutagenicity studies indicate that sulfentrazone is weakly clastogenic in the *in vitro* mouse lymphoma assay in the absence of S9 activation; however, the response was not evident in the presence of S9 activation. Sulfentrazone is neither mutagenic in bacterial cells, nor clastogenic in male or female mice *in vivo*. Specific information on the studies received and the nature of the adverse effects caused by sulfentrazone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Sulfentrazone: Human-Health Risk Assessment for the Establishment of Sulfentrazone Tolerances in/on: Rhubarb, Turnip Roots and Tops, Sunflower Subgroup 20B, Succulent Cowpea, Succulent Lima Bean, Succulent Vegetable Soybean, Wheat (Spring), Citrus Fruit Group 10–10, Low-Growing Berry Group 13–07, Tree Nut Group 14, Pistachios, and Crop Group 18 Nongrass Animal Feeds,'' pp. 45–49 in docket ID number EPA–HQ–OPP–2011–0758.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for sulfentrazone used for human risk assessment is shown in the following table:

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 14 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 0.14 mg/kg/day aPAD = 0.14 mg/kg/day.	2-Generation Reproductive Toxicity Study—Rat Offspring Toxicity LOAEL = 33 (M) and 40 (F) mg/kg/day based on reduced prenatal viability (fetal & litter), reduced litter size, increased number of stillborn pups, reduced pup and litter postnatal survival, and decreased pup body weights throughout lactation.
Acute dietary (General population including infants and children).	NOAEL = 250 mg/kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 2.5 mg/kg/day aPAD = 2.5 mg/kg/day.	Acute Neurotoxicity Study—Rat LOAEL = 750 mg/kg/day based on increased incidence of clinical signs and FOB parameters and decreased motor activity.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL = 14 mg/ kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.14 mg/kg/day cPAD = 0.14 mg/ kg/day.	2-Generation Reproductive Toxicity Study—Rat Offspring Toxicity LOAEL = 33 (M) and 40 (F) mg/kg/day based on reduced prenatal viability (fetal & litter), reduced litter size, increased number of stillborn pups, reduced pup and litter postnatal survival, and decreased pup body weights throughout lactation.
Short- (1–30 days) and Intermediate-Term (1–6 months) Incidental Oral.	NOAEL = 14 mg/ kg/day UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	2-Generation Reproduction Study—Rat Offspring LOAEL = 33 mg/kg/day based on decreased pup body weights and reduced postnatal survival in both generations.
Short-Term Dermal (1–30 days)	Dermal study NOAEL = 100 mg/ kg/day (dermal absorption rate = 100%). UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	Dermal Developmental Study—Rat LOAEL = 250 mg/kg/ day based on decreased fetal body weight; increased incidences of fetal skeletal variations: Hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, and incompletely ossified ischia or pubes; and reduced number of thoracic vertebral and rib ossification sites.
Short-Term Inhalation (1–30 days)	Inhalation (or oral) study NOAEL = 10 mg/ kg/day (inhalation absorption rate = 100%). UF_A = 10X UF_H = 10X FQPA SF = 10X	LOC for MOE = 1000	Prenatal Developmental Toxicity—Rat Developmental LOAEL = 25 mg/kg/day, based upon decreased mean fetal weights, and retardation in skeletal development evidenced by an increased number of litters with any variation and by decreased number of caudal vertebral and metacarpal ossification sites.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). M = male. F = female. FOB = functional observation battery.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfentrazone, EPA considered exposure under the petitioned-for tolerances as well as all existing sulfentrazone tolerances in 40 CFR 180.498. EPA assessed dietary exposures from sulfentrazone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for sulfentrazone. EPA performed separate acute risk assessments for females 13 to 49 years old and for the general population, including infants and children, based on different endpoints and aPADs. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues, dietary exposure evaluation model DEEM™ (ver. 7.81) default processing factors, and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues, DEEM™ (ver. 7.81) default processing factors, and assumed 100 PCT for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that sulfentrazone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for sulfentrazone. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sulfentrazone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sulfentrazone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Sulfentrazone and 3-carboxylic acid sulfentrazone are the residues of concern in drinking water. Therefore, the First Index Reservoir Screening Tool (FIRST) model was used to estimate concentrations of sulfentrazone and 3-carboxylic acid sulfentrazone in surface water, and the Screening Concentration in Ground Water (SCI–GROW) model was utilized to estimate concentrations in ground water. The estimated drinking water concentrations (EDWCs) of sulfentrazone and 3-carbyoxylic acid sulfentrazone for acute exposures are estimated to be 35.8 parts per billion (ppb) for surface water and 26.0 ppb for ground water. For chronic exposures for non-cancer assessments, EDWCs are

estimated to be 7.8 ppb for surface water and 26.0 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 35.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 26.0 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Sulfentrazone is currently registered for the following use that could result in residential exposures: Residential home lawns/turf and recreational turf, such as golf courses. EPA assessed residential exposure using the following assumptions: Adults were assessed for potential short-term dermal and inhalation handler exposure from applying sulfentrazone to residential turf/home lawns and for short-term post-application dermal exposure from contact with treated residential and recreational turf home lawns and golf courses. For adult handlers, dermal and inhalation exposures were aggregated for the short-term assessment. Because the level of concern for dermal exposures (MOEs less than 100) and inhalation exposure (MOEs less than 1,000) are different, a total aggregate risk index (ARI) approach was used for adult handlers instead of the MOE approach. ARIs of less than 1 indicate risks are not of concern. Children, ages 11 < 16 years old and 6 < 11 years old, were assessed for post-application dermal exposure from contact with treated residential and recreational turf (home lawns and golf courses). Children, ages 1 < 2 years old, were assessed for post-application dermal and incidental oral (hand-to-mouth, object-to-mouth, soil ingestion and episodic ingestion of granules) exposure to residential turf/home lawns.

For the short-term exposure duration, the post-application exposure scenarios that were combined for children 1 < 2 years old are the dermal and hand-to-mouth scenarios. This combination should be considered a protective estimate of children's exposure to pesticides used on turf. For the intermediate-term exposure duration, the only potential post-application exposure scenario is soil ingestion. Chronic exposures are not expected and were not assessed.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found sulfentrazone to share a common mechanism of toxicity with any other substances, and sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sulfentrazone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is evidence of increased quantitative susceptibility following *in utero* exposure in the oral and dermal rat developmental toxicity studies. Developmental effects, including decreased fetal body weights and reduced/delayed skeletal ossifications were observed at doses that were not maternally toxic. In the 2-generation reproduction study in rats, offspring effects such as decreased body weights and decreased litter survival were observed at a slightly maternally toxic dose (slightly decreased body weight gain), indicating possible slightly increased qualitative susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for all scenarios except for inhalation exposure, where a 10X FQPA SF factor has been retained due to the lack of an appropriate inhalation study. That decision is based on the following findings:

i. The toxicity database for sulfentrazone is complete with the exception of a 28-day inhalation study in rats. A 10X FQPA SF has been retained for inhalation exposure scenarios due to this data gap.

ii. There is no indication that sulfentrazone is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional safety factors to account for neurotoxicity.

iii. There is evidence of increased quantitative susceptibility following *in utero* exposure in the oral and dermal developmental toxicity studies in rat and possible evidence of slightly increased qualitative susceptibility of offspring in the 2-generation rat reproduction study. However, concern is low because clear NOAELs have been identified for the effects noted in these studies and both of the developmental toxicity studies have been chosen for endpoint selection, thereby protecting the relevant human subpopulations from the noted effects.

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

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sulfentrazone will occupy 3.2% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sulfentrazone from food and water will utilize 4.2% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of sulfentrazone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to sulfentrazone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 280 for children 1–2 years old, and an ARI of 3.9 for the general U.S. population and adult males. Because EPA's level of concern for sulfentrazone is an MOE of 100 or below and/or and ARI of 1 or below, this MOE and ARI are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Sulfentrazone is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to sulfentrazone.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 2,400 for children 1–2 years old, the only population subgroup of concern. Because EPA's level of concern for sulfentrazone is an MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, sulfentrazone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to sulfentrazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC)) is available to enforce the tolerance expression. The method has been forwarded for inclusion in the Pesticides Analytical Manual, Volume II. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs established for sulfentrazone on the subject crops in this rule.

C. Response to Comments

A comment was received objecting generally to the use of this chemical stating that the ''* * * product should [sic] not be approved to be manufactured or sold anywhere on earth * * *'' The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This comment appears to be directed at the underlying statute and not EPA's implementation of it; the commenter has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

The tolerances proposed in the petitions have been revised as follows: the rhubarb tolerance is being set at 0.15 ppm instead of 0.2 ppm; the turnip root tolerance is being set at 0.15 ppm instead of 0.2 ppm; the turnip top tolerance is being set at 0.60 ppm instead of 0.7 ppm; the wheat forage tolerance is being set at 0.50 ppm instead of 0.45 ppm; the wheat hay tolerance is being set at 0.30 instead of 0.20 ppm; the wheat grain tolerance is being set at 0.15 ppm instead of 0.20 ppm; the wheat straw tolerance is being set at 1.5 ppm instead of 1.4 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data and by using the organization for economic cooperation and development (OECD) tolerance calculation procedures.

Tolerances are not being established at this time for alfalfa forage, hay, and seed and clover forage, hay, and seed due to the need for additional residue data and a ruminant feeding study.

V. Conclusion

Therefore, tolerances are established for residues of sulfentrazone, (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites 3-hydroxymethylsulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in section 180.498(a)(2) in or on rhubarb at 0.15 ppm; turnip roots at 0.15 ppm; turnip tops at 0.60 ppm; sunflower subgroup 20B at 0.20 ppm; citrus fruit group 10–10 at 0.15 ppm; low growing berry group 13–07 at 0.15 ppm; tree nut group 14 at 0.15 ppm; pistachio at 0.15 ppm; and section 180.498 (c) tolerances

with regional registrations for wheat forage at 0.50 ppm; wheat hay at 0.30 ppm; wheat grain at 0.15 ppm; wheat straw at 1.5 ppm; and cowpea, succulent at 0.15 ppm.

In addition, the following tolerances are being removed as unnecessary in section 180.498(a)(2), sunflower seed, and strawberry, and in section 180.498(b), flax seed and strawberry.

Lastly, the tolerance for ''bean, lima, succulent'' is being moved from section 180.498(a)(2) to section 180.498(c).

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 3, 2012.

Lois Rossi,

Director, Registration Division, Office Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.498 is amended by:

■ i. In the table to paragraph (a)(2), remove the entries for ''bean, lima, succulent,'' ''sunflower, seed,'' and ''strawberry'', and add alphabetically new entries as shown below.

■ ii. Revise paragraphs (b) and (c).

The added and revised text read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
* * * * *	
Berry, low growing, group 13–07	0.15
* * * * *	
Fruit, citrus, group 10–10	0.15
* * * * *	
Nut, tree, group 14	0.15
* * * * *	
Pistachio	0.15
Rhubarb	0.15
* * * * *	
Sunflower subgroup 20B	0.20
Turnip, roots	0.15
Turnip, tops	0.60
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved].

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the combined residues of the free and conjugated forms of sulfentrazone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its metabolites HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide) and DMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone in or on the following commodities.

Commodity	Parts per million
Bean, lima, succulent	0.15
Cowpea, succulent	0.15
Wheat, forage	0.50
Wheat, grain	0.15
Wheat, hay	0.30
Wheat, straw	1.5

* * * * *

[FR Doc. 2012–17020 Filed 7–11–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0042; 4500030113]

RIN 1018–AV86

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Chupadera Springsnail and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered status for the Chupadera springsnail and designate critical habitat for the species under the Endangered Species Act of 1973, as amended. The effect of this rule is to conserve the Chupadera springsnail and its habitat under the Endangered Species Act.

DATES: This rule becomes effective on August 13, 2012.

ADDRESSES: This final rule and associated final economic analysis and final environmental assessment are available on the Internet at *http://www.regulations.gov* or *http://www.fws.gov/southwest/es/NewMexico/.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd. NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd. NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A final rule to list the Chupadera springsnail as endangered and (2) a final critical habitat designation for the Chupadera springsnail.

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. The Chupadera springsnail (*Pyrgulopsis chupaderae*) qualifies for listing as endangered based on threats to its habitat and its very limited range, which makes it more susceptible to extinction.

This rule designates the Chupadera springsnail as endangered with critical habitat. We are listing the Chupadera springsnail as endangered. In addition, we are designating critical habitat for the species in two units on private property totaling 0.7 hectares (1.9 acres) in Socorro County, New Mexico.

The Endangered Species Act provides the basis for our action. Under the Endangered Species Act, we can determine that a species is endangered or threatened 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; or (E) other natural or manmade factors affecting its continued existence.

We have determined that the Chupadera springsnail is endangered by habitat loss and degradation of aquatic resources, particularly decreases in spring flow due to drought and ongoing and future groundwater pumping in the surrounding area, habitat degradation from livestock grazing, and springhead modification.

We prepared an economic analysis. To ensure that we consider the economic impacts, we prepared an economic analysis of the designation of critical habitat. We published an announcement and solicited public comments on the draft economic analysis. The analysis found no economic impact of the designation of critical habitat beyond an unquantified ''stigma effect'' to land values.

We requested peer review of the methods used in our designation. We specifically requested that three knowledgeable individuals with scientific expertise in desert spring ecosystems or related fields review the scientific information and methods that we used when we proposed the species as endangered. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing and critical habitat rule.

We sought public comment on the designation. During the first comment period, we received five comment letters directly addressing the proposed listing and critical habitat designation. During the second comment period, we received two comment letters addressing the proposed listing and critical habitat designation. We received no comments during the third comment period, nor any comments regarding the draft economic analysis or draft environmental assessment.

Background

It is our intent to discuss below only those topics directly relevant to the listing of the Chupadera springsnail as endangered in this section of the final rule.

Previous Federal Actions

We identified the Chupadera springsnail as a candidate for listing in the May 22, 1984, Notice of Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. The Chupadera springsnail was petitioned for listing on November 20, 1985, and was found to be warranted for listing but precluded by higher priority activities on October 4, 1988 (53 FR 38969). The Chupadera springsnail has been included in all of our subsequent annual Candidate Notices of Review (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994; 61 FR 7595, February 28, 1996; 62 FR 49397, September 19, 1997; 64 FR 57533, October 25, 1999; 66 FR 54807, October 30, 2001; 67 FR 40657, June 13, 2002; 69 FR 24875, May 4, 2004; 70 FR 24869, May 11, 2005; 71 FR 53755, September 12, 2006; 72 FR 69033, December 6, 2007; 73 FR 75175, December 10, 2008; 74 FR 57803, November 9, 2009; 75 FR 69221, November 10, 2010; and 76 FR 66370, October 26, 2011). In 2002, the listing priority number was increased from 8 to 2 in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). A listing priority of 2 reflects a species with threats that are both imminent and high in magnitude. On August 2, 2011, we published a proposed rule to list the Chupadera springsnail as endangered with critical habitat (76 FR 46218), and

on January 20, 2012, we published a notice of availability of the draft environmental assessment and draft economic analysis and reopened the comment period for the proposed rule (77 FR 2943). Finally, on May 1, 2012, we reopened the comment period for the proposed rule and its associated documents for an additional 15 days (77 FR 25668).

Species Information

The Chupadera springsnail (*Pyrgulopsis chupaderae*) is a tiny (1.6 to 3.0 millimeters (mm) (0.06 to 0.12 inches (in)) tall) freshwater snail (Taylor 1987, p. 25; Hershler 1994, p. 30) in the family Hydrobiidae. The pigmentation of the body and operculum (covering over the shell opening) of this species is much more intense than in any other species in the genus *Pyrgulopsis* (Taylor 1987, p. 26). The Chupadera springsnail was first described by Taylor (1987, pp. 24–27) as *Fontelicella chupaderae.* Hershler (1994, pp. 11, 13), in his review of the genus *Pyrgulopsis,* found that the species previously assigned to the genus *Fontelicella* had the appropriate morphological characteristics for inclusion in the genus *Pyrgulopsis* and formally placed them within that genus. Preliminary genetic information confirms that the Chupadera springsnail is a valid species (Hershler *et al.* 2010, p. 246).

Springsnails are strictly aquatic, and respiration occurs through an internal gill. Springsnails in the genus *Pyrgulopsis* are egg-layers with a single small egg capsule deposited on a hard surface (Hershler 1998, p. 14). The larval stage is completed in the egg capsule, and upon hatching, the snails emerge into their adult habitat (Brusca and Brusca 1990, p. 759; Hershler and Sada 2002, p. 256). The snail exhibits separate sexes; physical differences are noticeable between them, with females being larger than males. Because of their small size and dependence on water, significant dispersal likely does not occur, although on rare occasions aquatic snails have been transported by becoming attached to the feathers and feet of migratory birds (Roscoe 1955, p. 66; Dundee *et al.* 1967, pp. 89–90; Hershler *et al.* 2005, p. 1763). Hydrobiid snails feed primarily on periphyton, which is a complex mixture of algae, bacteria, and microbes that occurs on submerged surfaces in aquatic environments (Mladenka 1992, pp. 46, 81; Allan 1995, p. 83; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). The lifespan of most aquatic snails is 9 to 15 months (Pennak 1989, p. 552).

Snails in the family Hydrobiidae were once much more widely distributed during the wetter Pleistocene Age (1.6 million to 10,000 years ago). As ancient lakes and streams dried, springsnails became patchily distributed across the landscape in geographically isolated populations exhibiting a high degree of endemism (species found only in a particular region, area, or spring) (Bequart and Miller 1973, p. 214; Taylor 1987, pp. 5–6; Shepard 1993, p. 354; Hershler and Sada 2002, p. 255). Hydrobiid snails occur in springs, seeps, marshes, spring pools, outflows, and diverse flowing water habitats. Although Hydrobiid snails as a group are found in a wide variety of aquatic habitats, they are sensitive to water quality, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Proximity to spring vents, where water emerges from the ground, plays a key role in the life history of springsnails. Many springsnail species exhibit decreased abundance farther away from spring vents, presumably due to their need for stable water chemistry (Hershler 1994, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14). Several habitat parameters of springs, such as substrate, dissolved carbon dioxide, dissolved oxygen, temperature, conductivity, and water depth, have been shown to influence the distribution and abundance of *Pyrgulopsis* (O'Brien and Blinn 1999, pp. 231–232; Mladenka and Minshall 2001, pp. 209–211; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–15; Lysne *et al.* 2007, p. 650). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation (Pennak 1989, p. 552).

The Chupadera springsnail is endemic to Willow Spring and an unnamed spring of similar size 0.5 kilometers (km) (0.3 miles (mi)) north of Willow Spring at the southeast end of the Chupadera Mountains in Socorro County, New Mexico (Taylor 1987, p. 24; Mehlhop 1993, p. 3; Lang 1998, p. 36). The two springs where the Chupadera springsnail has been documented are on two hillsides where groundwater discharges flow through volcanic gravels containing sand, mud, and aquatic plants (Taylor 1987, p. 26). Water temperatures in areas of the springbrook (the stream flowing from the springhead) currently occupied by the springsnail range from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F)) over all seasons (as measured in 1997 to 1998). Water velocities range from 0.01 to 0.19 meters per second (m/s) (0.03 to 0.6 feet per second (ft/s)) (Lang 2009, p. 1). In 1998, when Willow Spring was visited by New Mexico Game and Fish biologists, the springbrook was 0.5 to 2 meters (m) (1.6 to 6.6 feet (ft)) wide, 6 to 15 centimeters (cm) (2.4 to 6 in) deep, and approximately 38 m (125 ft) long, upstream of where it entered a pond created by a berm (small earthen dam) across the springbrook (Lang 2009, p. 1).

The current status of the population at Willow Spring is unknown because access has been denied by the landowner since 1999, despite requests for access to monitor the springsnail (Carman 2004, pp. 1–2; 2005, pp. 1–5; NMDGF 2007, p. 12). Prior surveys show the springsnail population to be locally abundant and stable at this location through 1999 (Lang 1998, p. 36; Lang 1999, p. A5), with average densities in 1997–1998 of 23,803 ± 17,431 per square meter (2,211 ± 1,619 per square foot) (NMDGF 2011, p. 2). The landowner recently provided qualitative information in response to the 2011 proposed rule (76 FR 46218) that a springsnail, presumed to be the Chupadera springsnail, continues to occur at the springhead, although not in high numbers, and is abundant in the springbrook (Highland Springs Ranch, LLC 2011, p. 4). At the unnamed spring, the species was originally discovered in 1986 (Stefferud 1986, p. 1) and reported from this location again in 1993 (Melhop 1993, p. 11). However, repeated sampling between 1995 and 1997 yielded no snails, and the habitat at that spring has been significantly degraded (devoid of riparian vegetation due to trampling by cattle, and the benthic habitat was covered with manure) (Lang 1998, p. 59; Lang 1999, p. B13). Therefore, the species is likely extirpated from this unnamed spring (NMDGF 1996, p. 16; Lang 1999, p. B13).

Springsnail dispersal is primarily limited to aquatic habitat connections (Hershler *et al.* 2005, p. 1755). Once extirpated from a spring, natural recolonization of that spring or other nearby springs is very rare.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing of the Chupadera springsnail and the proposed designation of critical habitat for the Chupadera springsnail during three comment periods. The first comment period associated with the publication of the proposed rule (76 FR 46218) opened on August 2, 2011, and closed on October 3, 2011. We also requested comments on the proposed critical

habitat designation, associated draft economic analysis, and associated environmental assessment during a comment period that opened January 20, 2012, and closed on February 21, 2012 (77 FR 2943). Finally, on May 1, 2012, we reopened the comment period for an additional 15 days (77 FR 25668). We did not receive any requests for a public hearing, and none was held.

During the first comment period, we received five comment letters directly addressing the proposed listing and critical habitat designation. During the second comment period, we received two comment letters addressing the proposed listing and critical habitat designation. During the third comment period, we received no comment letters. We received no comments regarding the draft economic analysis or draft environmental assessment. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below. Comments we received were grouped into eight general issues specifically relating to the proposed listing status or proposed critical habitat designation for the Chupadera springsnail and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Chupadera springsnail. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing and critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer and one commenter noted that, while the loss of groundwater is the biggest threat to the Chupadera springsnail, protections afforded by the Endangered Species Act are not sufficient to ameliorate this threat.

Our Response: Under section 4(b)(1)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we must base a listing decision solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are ''based solely on biological criteria and to prevent non-biological criteria from affecting such decisions'' (House of Representatives Report Number 97–835, 97th Congress, Second Session 19 (1982)). Therefore, we are not able to consider the potential efficacy of listing a species under the Act when making this determination. If a species meets the definition of endangered or threatened based on a review of the best available scientific information, then we must list that species under the Act. There is no discretion under the Act to make a not warranted finding based on a perception that the protections afforded by the Act would not be effective.

(2) *Comment:* One peer reviewer suggested that, since we have no information about the Chupadera springsnail or its habitat since 1999, we should presume that other natural or manmade factors (Factor E) may be a threat.

Our Response: Under Factor E, we found that the best scientific and commercial information available indicates that climate change may exacerbate current threats to the Chupadera springsnail but that climate change is not a threat in and of itself. We did not find other natural or manmade factors that warranted evaluation under Factor E. The lack of recent information does not necessitate presuming there are other natural or manmade factors threatening the species.

Comments From States

We received one comment letter from the New Mexico Department of Game and Fish regarding the proposal to list and designate critical habitat for the Chupadera springsnail, indicating their support for listing and critical habitat designation. Additional information regarding population status and species biology was also included in the letter, and that information has been incorporated into the appropriate sections of this rule.

Public Comments

(3) *Comment:* One commenter was concerned that we did not complete an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) prior to publication of the proposed rule.

Our Response: We were unable to determine if an initial regulatory flexibility analysis was necessary prior to completion of the draft economic analysis. After considering the draft economic analysis, we certified in the January 20, 2012 (77 FR 2943, p. 2946), publication that an initial regulatory flexibility analysis is not required. Compliance with the Regulatory Flexibility Act is part of this final rule and can be found under the subheading of ''*Regulatory Flexibility Act* (*5 U.S.C. 601* et seq.)''.

(4) *Comment:* Two commenters suggested that we not designate the unnamed spring as critical habitat for the Chupadera springsnail because the species has been extirpated and habitat does not currently exist at the site.

Our Response: To be included in the critical habitat designation, unoccupied habitat must be considered to be essential for the conservation of the Chupadera springsnail. We considered the importance of the unnamed spring to the overall status of the species to prevent extinction and contribute to recovery, whether the unnamed spring could be restored to contain the necessary physical and biological features to support the Chupadera springsnail, and whether a population could be reestablished at the site. Although the unnamed spring has been excavated and currently exists as a pool and downstream marsh, we believe the site could be restored to provide suitable habitat for the Chupadera springsnail. Because the species only exists at one other site, the reintroduction of the snail at this unnamed spring would provide protection against extinction due to catastrophic events and contribute to its recovery. As a result, we have included the unnamed spring in this final critical habitat designation, as we believe it is essential for the conservation of the species.

(5) *Comment:* Two commenters pointed out that the information regarding the species' population numbers is more than 10 years old and suggested we rely on more recent survey information.

Our Response: We agree that recent information would be more informative of the population's status, but State of New Mexico and Service biologists have not been allowed access to the springs since 1999, despite repeated requests. Under the Act, we must use the best available scientific and commercial information to inform our listing decisions; in this case, the data up through 1999 is the best available

information about the species and its habitat.

(6) *Comment:* One commenter questioned whether the Chupadera springsnail ever occurred at the unnamed spring and why we stated the species has been known from Willow Spring since 1979 when the species was described in 1987.

Our Response: The Chupadera springsnail was documented from the unnamed spring in 1986 (Stefferud 1986, p. 1). Additionally, while the Chupadera springsnail was not described in the peer-reviewed literature until 1987 (Taylor 1987, pp. 24–26), it was first collected in 1979 by D.W. Taylor and R.H. Weber (Taylor 1987, p. 24).

(7) *Comment:* One commenter asked if we proposed to designate a buffer around the springhead, springbrook, seeps, ponds, and seasonally wetted meadow, and if so, how far from these features the buffer extended.

Our Response: We did not propose to designate a buffer around the spring features. We identified a coordinate for each spring and proposed to designate as critical habitat the springhead, springbrook, small seeps and ponds, seasonally wetted meadow, and all of the associated spring features. To determine the approximate area of the critical habitat, we used satellite imagery to roughly calculate the area of the spring features surrounding those coordinates.

(8) *Comment:* One commenter suggested that, in lieu of listing, the Service buy the land surrounding Willow Spring.

Our Response: The Act requires us to determine if the Chupadera springsnail is in danger of extinction throughout all or a significant portion of its range at the time we conduct a review of the species. Any future conservation actions, such as purchasing land, if the landowner is willing, or land management efforts to ameliorate threats, will be evaluated as part of the recovery planning process after the species is listed.

Summary of Changes From Proposed Rule

Since the publication of the August 2, 2011, proposed rule to list the Chupadera springsnail as endangered with critical habitat (76 FR 46218), we have made the following changes:

(1) The New Mexico Department of Game and Fish provided us with more detailed information regarding the Chupadera springsnail population and habitat at Willow Spring, and we updated the biological information in this rule accordingly.

(2) The landowner of Willow Spring provided qualitative information about the current habitat at Willow Spring and the current presence of the Chupadera springsnail, which we have incorporated into this rule.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The principal threats to the habitat of Chupadera springsnail at Willow Spring include groundwater depletion, livestock grazing, and spring modification (Lang 1998, p. 59; NMDGF 2002, p. 45). These threats are intensified by the fact that the species' known historic range was only two small springs, and it has been extirpated from one of the known locations. Other potential threats, such as fire and recreational use at the springs, were considered, but no information was found that indicated these may be affecting the species at this time.

Groundwater Depletion

Habitat loss due to groundwater depletion threatens the Chupadera springsnail. Since spring ecosystems rely on water discharged to the surface from underground aquifers, groundwater depletion can result in the destruction of habitat by the drying of springs and cause the loss of spring fauna. For example, groundwater depletion from watering a lawn adjacent to a small spring (Snail Spring) in Cochise County, Arizona, has reduced habitat availability of the San Bernardino springsnail (*Pyrgulopsis bernardina*) at that location because of the loss of flowing water to the spring (Malcom *et al.* 2003, p. 18; Cox *et al.* 2007, p. 2). Also, in Pecos County, Texas, two large spring systems (Comanche Springs and Leon Springs) were completely lost to drying when irrigation wells were activated in the supporting local aquifer (Scudday 1977, pp. 515–516). Spring drying or flow reduction from groundwater pumping has also been documented in the Roswell (August 9, 2005; 70 FR 46304) and Mimbres Basins (Summers 1976, pp. 62, 65) of New Mexico.

Area groundwater use may significantly increase due to Highland Springs Ranch, a developing subdivision in the immediate vicinity of Chupadera springsnail habitat. Beginning in 1999, Highland Springs Ranch is being developed in four phases with approximately 650 lots ranging from 8 hectares (ha) (20 acres (ac)) to 57 ha (140 ac). There is no central water system, so each homeowner is responsible for drilling individual water wells. In Highland Springs Ranch, homeowners are entitled to 629 cubic meters (0.51 acre-feet) of water per year (New Mexico Office of the State Engineer (NMOSE) 2009, p. 1).

Although the NMOSE offered a positive opinion determining that sufficient groundwater is available to supply the needs of the subdivision for 40 years (Highland Springs, LLC 2011, p. 2), the NMOSE bases that decision on water availability, not on ensuring spring flow. Because of the proximity of the subdivision to Willow Spring (the northern boundary of one of the lots (42A) of Mountain Shadows, a phase of Highland Springs Ranch, is approximately 91 m (300 ft) from Willow Spring), it appears likely that groundwater pumping could affect the discharge from the spring through depletion of groundwater. Under normal conditions, Willow Spring has a very small discharge (Lang 2009, p. 1), and, therefore, any reduction in available habitat from declining spring flows would be detrimental to the Chupadera springsnail. Given the proximity of the unnamed spring (0.5 km (0.3 mi)) to Willow Spring, and because they both were historically occupied by the Chupadera springsnail, we believe both springs are fed by the same groundwater aquifer. Thus, groundwater depletion that would affect spring flow at Willow Spring would also likely affect the unnamed spring.

The Bosque del Apache National Wildlife Refuge western boundary is located about 0.8 km (0.5 mi) east of the spring where Chupadera springsnail occurs, providing protection from development and groundwater depletion for much of the land east of the spring. Therefore, any development

activities that may deplete groundwater are likely to occur in areas west of the springs.

In addition, any decreases in regional precipitation due to prolonged drought will further stress groundwater availability and increase the risk of diminishment or drying of the springs. The current, multiyear drought in the western United States, including the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). In addition, numerous climate change models predict an overall decrease in annual precipitation in the southwestern United States and northern Mexico (see discussion under *Factor E,* Climate Change, below). Recent regional drought may have affected habitat for Chupadera springsnail. For example, the extreme drought of 2002 resulted in drying streams across the State, with nearly all of the major river basins in New Mexico at historic low flow levels (New Mexico Drought Task Force 2002, p. 1). Because of our inability to access Willow Spring, we do not have information on how this drought affected the Chupadera springsnail.

Drought affects both surface and groundwater resources and can lead to diminished water quality (Woodhouse and Overpeck 1998, p. 2693; MacRae *et al.* 2001, pp. 4, 10), in addition to reducing groundwater quantities. The small size of the springbrooks where the Chupadera springsnail resides (1.5 m (5 ft) wide or less) makes them particularly susceptible to drying, increased water temperatures, and freezing. The springs do not have to cease flowing completely to have an adverse effect on springsnail populations. Because these springs are so small, any reductions in the flow rates from the springs can reduce the available habitat for the springsnails, increasing the species' risk of extinction. Decreased spring flow can lead to a decrease in habitat availability, an increase in water temperature fluctuations, a decrease in dissolved oxygen levels, and an increase in salinity (MacRae *et al.* 2001, p. 4). Water temperatures and factors such as dissolved oxygen in springs do not typically fluctuate under natural conditions, and springsnails are narrowly adapted to spring conditions and are sensitive to changes in water quality (Hershler 1998, p. 11). Groundwater depletion can lead to loss and degradation of Chupadera springsnail habitat and presents a substantial threat to the species.

Livestock Grazing

It is estimated that livestock grazing has damaged approximately 80 percent of stream and riparian ecosystems in the western United States (Belsky *et al.* 1999, p. 419). The damage occurs from increased sedimentation, decreased water quality, and trampling and overgrazing stream banks where succulent (high water content) forage exists (Armour *et al.* 1994, p. 10; Fleischner 1994, p. 631; Belsky *et al.* 1999, p. 419). Livestock grazing within spring ecosystems can alter or remove springsnail habitat, resulting in restricted distribution or extirpation of springsnails. For example, cattle trampling at a spring in Owens Valley, California, reduced banks to mud and sparse grass, limiting the occurrence of the endangered Fish Slough springsnail (*Pyrgulopsis perturbata*) (Bruce and White 1998, pp. 3–4). Poorly managed livestock use of springbrooks can directly negatively affect springsnails through contamination of aquatic habitat from feces and urine, habitat degradation of the springbrook by trampling of substrate and loss of aquatic and riparian vegetation, and crushing of individual springsnails.

When the species was first collected at the unnamed spring in 1986, Stefferud (1986, p. 1) reported that the spring was already a series of small stock tanks for cattle and horses with very little riparian vegetation. Lang (1998, p. 59) reported that the unnamed spring was heavily impacted by cattle because it was devoid of riparian vegetation, and the gravel and cobbles were covered with mud and manure. It appears that overgrazing and access to the aquatic habitat of the spring by livestock may have caused the extirpation of the Chupadera springsnail population from this unnamed spring (NMDGF 1996, p. 16; Lang 1999, p. A5). Grazing was occurring at Willow Spring in 1999 (the last time the spring was visited) (Lang 1999, p. A5). The landowner has indicated that cattle ranching continues to occur in areas of Highland Springs Ranch, but that no grazing is currently occurring within or adjacent to Willow Spring (Highland Springs, LLC 2011, p. 3). Continued use of the springs by livestock, if it is occurring at Willow Spring or the unnamed spring we are designating as critical habitat in this rule, presents a substantial threat to the Chupadera springsnail.

Spring Modification

Spring modification occurs when attempts are made to increase flow through excavation at the springhead, when the springhead is tapped to direct the flow into a pipe and then into a tank or a pond, when excavation around the springhead creates a pool, inundating the springhead, or when the springbrook is dammed to create a pool downstream of the springbrook. Because springsnails are typically most abundant at the springhead where water chemistry and water quality are normally stable, any modification of the springhead could be detrimental to springsnail populations. In addition, any modification or construction done at the springhead could also affect individuals downstream through siltation of habitat. Because springsnails are typically found in shallow flowing water, inundation that alters springsnail habitat by changing water depth, velocity, substrate composition, vegetation, and water chemistry can cause population reduction or extirpation. For example, inundation has negatively affected populations of other springsnails such as Koster's springsnail (*Juturnia kosteri*) and Roswell springsnail (*Pyrgulopsis roswellensis*) at Bitter Lake National Wildlife Refuge and caused their extirpation from North Spring in Chaves County, New Mexico (NMDGF 2004, p. 33; 70 FR 46304, August 9, 2005).

The springheads at both Willow Spring and the unnamed spring have been modified through impoundment of the springbrooks and, at Willow Spring, to maintain a pump and improve water delivery systems to cattle (Lang 1998, p. 59). At Willow Spring, it appears that springbrook impoundment has only occurred downstream of the source, leaving some appropriate springbrook habitat intact upstream (Taylor 1987, p. 26). At the last visit to the Willow Spring in 1999, the habitat at the spring was of sufficient quality to sustain the Chupadera springsnail, but any subsequent alterations could be catastrophic for the species. Spring modification, either at the springhead or in the springbrook, is a threat to the Chupadera springsnail.

Small, Reduced Range

The geographically small range of the Chupadera springsnail increases the risk of extinction from any effects associated with other threats (NMDGF 2002, p. 1). When species are limited to small, isolated habitats, like the Chupadera springsnail in one small desert spring system, they are more likely to become extinct due to a local event that negatively effects the population (Shepard 1993, pp. 354–357; McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53).

The natural historic range of the Chupadera springsnail includes only

two small spring sites. As a result of habitat alteration at the unnamed spring, the species now occurs only at Willow Spring (Lang 1999, p. B13). We have very limited information on the current status of the species because access to Willow Spring has been continually denied since 1999 (Carman 2004, p. 1–2; Carman 2005, p. 1–5; NMDGF 2007, p. 12). The springsnail is limited to aquatic habitats in small spring systems and has minimal mobility, so it is unlikely its range will ever expand. As a result, if the population at Willow Spring were extirpated for any reason, the species would be extinct, since there are no other sources of this springsnail from which to recolonize. This situation makes the magnitude of impact of any possible threat very high. In other words, the resulting effects of any of the threat factors under consideration here, even if they are relatively small on a temporal or geographic scale, could result in complete extinction of the species.

Therefore, because the Chupadera springsnail is restricted to a single small site, it is particularly susceptible to extinction if its habitat is degraded or destroyed. While the small, reduced range does not represent an independent threat to the species, it does substantially increase the risk of extinction from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Summary of Factor A

In summary, the Chupadera springsnail is threatened by the present destruction and modification of its habitat and range. Groundwater depletion due to new wells from nearby subdivision developments, in addition to droughts, is likely resulting in reduced flow at the spring that supports the species. Livestock grazing has likely resulted in the extirpation of the species from habitat alteration and contamination at one of these springs and may continue in the future. Finally, springhead and springbrook modification have affected Chupadera springsnail habitat at Willow Spring, and further modification may have occurred since the last visit to this site in 1999. Because of the extremely small and reduced range of the species, these threats have an increased risk of resulting in extinction of the Chupadera springsnail. These threats are already occurring, they affect the full historical range of the species, and they result in the species being at risk of extinction.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are very few people who are interested in or study springsnails, and those who do are sensitive to their rarity and endemism. Consequently, collection for scientific or educational purposes is very limited. As far as we know, because the Chupadera springsnail occurs on private land with limited access, there has been no collection of individuals since 1999, when NMDGF made its last collection (Lang 2000, p. C5). There are no known commercial or recreational uses of the springsnails. For these reasons, we find that the Chupadera springsnail is not threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The Chupadera springsnail is not known to be affected or threatened by any disease. At the time the spring was last surveyed, no nonnative predatory species were present. However, any future introduction of a nonnative species into the habitat of the Chupadera springsnail could be catastrophic to the springsnail. The Chupadera springsnail has an extremely small and reduced range, and introduction of a nonnative predator or competitor carries an increased risk of resulting in extinction of the Chupadera springsnail. Because there are no known nonnative species present, we find that the Chupadera springsnail is not currently threatened by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' We interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, Memoranda of Understanding (MOUs), Cooperative Agreements, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Chupadera springsnail.

New Mexico State law provides some limited protection to the Chupadera springsnail. The species is listed as a New Mexico State endangered species, which are those species ''whose prospects of survival or recruitment within the state are likely to become jeopardized in the near future'' (NMDGF 1988, p. 1). This designation provides protection under the New Mexico Wildlife Conservation Act of 1974 (the State's endangered species act) (19 NMAC 33.6.8), but only prohibits direct take of species, except under issuance of a scientific collecting permit. No permit has been issued for taking this species. The New Mexico Wildlife Conservation Act defines ''take'' or ''taking'' as ''harass, hunt, capture, or kill any wildlife or attempt to do so'' (17 NMAC 17.2.38). In other words, New Mexico State status as an endangered species only conveys protection from collection or intentional harm to the animals themselves but does not provide habitat protection. Because most of the threats to the Chupadera springsnail are from effects to its habitat, in order to protect individuals and ensure their long-term conservation and survival, their habitat must be protected. Therefore, this existing regulation is inadequate to mitigate the impacts of identified threats to the species. Namely, the existing New Mexico Wildlife Conservation Act will not prevent modification to the habitat of the Chupadera springsnail.

We also considered whether there were any other regulations that might address the identified threats to the species. In particular, we searched for State laws or local ordinances that would prevent groundwater pumping in the subdivisions adjacent to Willow Spring from affecting spring flows in the habitat of the Chupadera springsnail. The water supply for subdivision homes comes from individual wells, and each well in the Highland Springs Ranch subdivisions may pump up to 629 cubic meters (0.51 acre feet) per year (NMOSE

2009, p. 1). We found that the New Mexico Office of the State Engineer evaluates proposed water delivery systems if the proposed system is in an area designated as a domestic well management area (Utton Transboundary Resources Center 2011, p. 3). The land being developed around Willow Spring has not been designated as such and therefore does not provide protections to the habitat of Chupadera springsnail. As discussed in Factor A above, inadequate spring flow due to pumping of the groundwater aquifer by homeowners is a threat to the habitat of the Chupadera springsnail, and the current regulatory mechanisms in place do not alleviate this threat. Additionally, habitat degradation from livestock grazing is also a threat to the Chupadera springsnail, and there are no regulatory mechanisms to protect the springs from the effects of livestock grazing, and so none are evaluated for their adequacy.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other natural or manmade factors affecting the continued existence of the Chupadera springsnail include introduced species and climate change. These threats are intensified by the fact that the species' known historical range was only two small springs, and it has been extirpated from one of the known locations.

Introduced Species

Introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). Because the distribution of the Chupadera springsnail is so limited, and its habitat so restricted, introduction of certain nonnative species into its habitat could be devastating. Saltcedar (*Tamarix* spp.) threatens spring habitats primarily through the amount of water it consumes and from the chemical composition of the leaves that drop to the ground and into the springs. Saltcedar leaves that fall to the ground and into the water add salt to the system, as their leaves contain salt glands (DiTomaso 1998, p. 333). Additionally, dense stands of common reed (*Phragmites australis*) choke small stream channels, slowing water velocity and creating more pool-like habitat; this habitat is not suitable for Chupadera springsnail, which are found in flowing water. Finally, Russian thistle (*Salsola tragis;* tumbleweed) can create problems in spring systems by being blown into the channel, slowing flow, and overloading the system with organic material (Service 2005, p. 2). The control and removal of nonnative vegetation can also impact springsnail habitats. For example, this has been identified as a factor responsible for localized extirpations of populations of the federally endangered Pecos assiminea (*Assiminea pecos*), a snail in New Mexico, due to vegetation removal that resulted in soil and litter drying, thereby making the habitat unsuitable (Taylor 1987, pp. 5, 9).

Likewise, nonnative mollusks have affected the distribution and abundance of native mollusks in the United States. Of particular concern for the Chupadera springsnail is the red-rim melania (*Melanoides tuberculata*), a snail that can reach tremendous population sizes and has been found in isolated springs in the west (McDermott 2000, pp. 13–16; Ladd 2010, p. 1; U.S. Geological Survey 2010, p. 1). The red-rim melania has caused the decline and local extirpation of native snail species, and it is considered a threat to endemic aquatic snails that occupy springs and streams in the Bonneville Basin of Utah (Rader *et al.* 2003, p. 655). It is easily transported on fishing gear or aquatic plants, and because it reproduces asexually (individuals can develop from unfertilized eggs), a single individual is capable of founding a new population. It has become established in isolated desert spring ecosystems such as Ash Meadows, Nevada, San Solomon Spring and Diamond Y Spring, Texas, and Cuatro Ciénegas, Mexico. In many locations, this exotic snail is so numerous that it covers the bottom of the small stream channel. If the red-rim melania were introduced into Willow Spring, it could outcompete and eliminate the Chupadera springsnail.

None of these nonnative species is known to occur in the habitats of the Chupadera springsnail at this time, and so potential impacts have not been realized. While any of these species, or others, could threaten the Chupadera springsnail if they were introduced to the small habitats of the species, nonnative species are not considered a current threat to the Chupadera springsnail.

Climate Change

According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 5), ''[w]arming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' The average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 5). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 8). Data suggest that heat waves are occurring more often over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, pp. 8, 15).

The IPCC (2007, pp. 12, 13) predicts that changes in the global climate system during the 21st century will very likely be larger than those observed during the 20th century. For the next two decades, a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 12). Afterwards, temperature projections increasingly depend on specific emission scenarios (IPCC 2007, p. 13). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6 °C to 4.0 °C (1.1 °F to 7.2 °F), with the greatest warming expected over land (IPCC 2007, p. 15). However, the growth rate of carbon dioxide emissions continues to accelerate and is above even the most fossil fuel intensive scenario used by the IPCC (Canadell *et al.* 2007, p. 18866; Global Carbon Project 2008, p. 1), suggesting that the effects of climate change may be even greater than those projected by the IPCC.

In consultation with leading scientists from the Southwest, the New Mexico Office of the State Engineer prepared a report for the Governor of New Mexico (NMOSE 2006), which made the following observations about the impact of climate change in New Mexico:

(1) Warming trends in the American Southwest exceed global averages by about 50 percent (p. 5);

(2) Models suggest that even moderate increases in precipitation would not offset the negative impacts to the water supply caused by increased temperature (p. 5);

(3) Temperature increases in the Southwest are predicted to continue to be greater than the global average (p. 5); and

(4) The intensity, frequency, and duration of drought may increase (p. 7).

One of the primary effects of climate change on the Chupadera springsnail is likely to be associated with groundwater availability that supports the spring flows in its habitat. There is high confidence that many semiarid areas like the western United States will suffer a decrease in water resources due to climate change (Kundzewicz *et al.* 2007, p. 175). Consistent with the outlook presented for New Mexico, Hoerling (2007, p. 35) reports that

modeling indicates that a 25 percent decline in stream flow will occur from 2006 to 2030, and a 45 percent decline will occur from 2035 to 2060 in the Southwest, compared to stream flows between 1990 and 2005. Milly *et al.* (2005, p. 349) project a 10 to 30 percent decrease in runoff in mid-latitude western North America by the year 2050, based on an ensemble of 12 climate models. Solomon *et al.* (2009, p. 1707) predict precipitation amounts in the southwestern United States and northern Mexico will decrease by as much as 9 to 12 percent (measured as percentage of change in precipitation per degree of warming, relative to 1900 to 1950 as the baseline period). Christensen *et al.* (2007, p. 888) state, ''The projection of smaller warming over the Pacific Ocean than over the continent * * * is likely to induce a decrease in annual precipitation in the southwestern USA and northern Mexico.'' In addition, Seager *et al.* (2007, p. 1181) show that there is a broad consensus among climate models that the Southwest will get drier in the 21st century and that the transition to a more arid climate is already under way. Only one of 19 models has a trend toward a wetter climate in the Southwest (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models, and all but three predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021 to 2040 (Seager *et al.* 2007, p. 1181). These research results indicate that the Southwest can be expected to be hotter and drier in the future, likely negatively affecting the water resources, including spring ecosystems such as Willow Spring.

It is anticipated that the effects of climate change will also lead to greater human demands on scarce water sources while at the same time leading to decreasing water availability because of increased evapotranspiration (water drawn up by plants from the soil that evaporates from their leaves), reduced soil moisture, and longer, hotter summers (Archer and Predick 2008, p. 25; Karl *et al.* 2009, pp. 47, 52). Climate change will likely reduce groundwater recharge through reduced snowpack and perhaps through increased severity in drought (Kundzewicz *et al.* 2007, p. 175; Stonestrom and Harrill 2008, p. 21). There is currently no information to quantify the likely effects of climate change on the groundwater system that supports the springs where the Chupadera springsnail occurs. However, in a study of the Ogallala aquifer, a much larger aquifer east of Willow Spring, Rosenberg *et al.* (1999, p. 688) found that groundwater recharge will be reduced in the face of climate change. They also found that Ogallala aquifer water levels have been directly correlated with annual precipitation over time (Rosenberg *et al.* 1999, p. 679) and concluded that changes in climate could profoundly affect the accessibility and reliability of water supplies from the aquifer. We anticipate that the aquifer that supplies water to Chupadera springsnail habitat may also be susceptible to climate change-induced changes in precipitation.

In summary, the Chupadera springsnail could be affected by the combined effects of global and regional climate change, along with the increased probability of long-term drought. However, we are not able to predict with certainty how these indirect effects of climate change will affect Chupadera springsnail habitat because we lack specific information on the groundwater system that provides water to the species' spring habitat. However, we conclude that climate change may be a significant stressor that indirectly exacerbates existing threats by increasing the likelihood of prolonged drought that would reduce groundwater availability and incur future habitat loss. As such, climate change, in and of itself, may affect the springsnail, but the severity and immediacy (when the impacts occur) of the impacts remain uncertain. We conclude that climate change is not currently a threat to the Chupadera springsnail, but it has the potential to be a threat in the foreseeable future, and impacts from climate change in the future will likely exacerbate the current and ongoing threat of habitat loss caused by other factors, as discussed above.

Summary of Factor E

The Chupadera springsnail is not currently threatened by other natural or manmade factors. However, any future introduction of harmful nonnative species could have severe effects on the species. In addition, the effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, particularly the loss of spring flows resulting from prolonged drought.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Chupadera springsnail and have determined that the species warrants listing as endangered throughout its range. The loss of one of two known populations, the ongoing threat of modification of the habitat at the only known remaining site (Willow Spring) from grazing and spring modification, and the imminent threat of groundwater depletion posed by subdivision development adjacent to the spring places this species at great risk of extinction. The small, reduced distribution of the Chupadera springsnail heightens the danger of extinction due to threats from Factor A (specifically loss of spring flow, livestock grazing, and spring modification). Additionally, the existing regulatory mechanisms are not adequate to ameliorate known threats (Factor D). The existing threats are exacerbated by the effects of ongoing and future climate change, primarily due to the projected increase in droughts. Because these threats are ongoing now or are imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species, we find that a designation of endangered, rather than threatened, is appropriate.

The Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' In considering ''significant portion of the range,'' a key part of this analysis in practice is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Based on the threats to the Chupadera springsnail throughout its entire limited range (one spring), we find that the species is in danger of extinction throughout all of its range, based on the immediacy, severity, and scope of the threats described above. The species is designated as endangered, rather than threatened, because the threats are occurring now or are imminent, and their potential impacts to the species would be catastrophic given the very limited range of the species, making the Chupadera springsnail at risk of extinction at the present time. Because threats extend throughout its entire range, it is unnecessary to determine if it is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we designate the Chupadera springsnail as endangered throughout its range in accordance with sections 3(6) and 4(a)(1) of the Act.

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. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of 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, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species 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 (comprised of species experts, Federal and State agencies, nongovernment 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 from our Web site (*http://www.fws.gov/endangered*), or from our New Mexico 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, 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 and State lands.

Once this species is listed, 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 State of New Mexico would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Chupadera springsnail. 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 this species. Additionally, we invite you to submit any new information on this 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, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Once a species is subsequently listed, section 7(a)(2) 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 adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. For the Chupadera springsnail, Federal agency actions that may require consultation would include any federally funded activities in the Willow Spring watershed, groundwater source area, or directly in the spring that may affect Willow Spring or the Chupadera springsnail (for example, activities that require a permit from the U.S. Army Corps of Engineers pursuant to section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*)).

Jeopardy Standard

Prior to and following listing and designation of critical habitat, if prudent and determinable, the Service applies an analytical framework for jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the species. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them. The jeopardy analysis usually expresses the survival and recovery needs of the species in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Section 9 Take

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for

endangered species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

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 will or will 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 on proposed 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 the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Chupadera springsnail, such as the introduction of competing, nonnative species to the State of New Mexico;

(3) The unauthorized release of biological control agents that attack any life stage of this species;

(4) Unauthorized modification of the springs; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which the Chupadera springsnail is known to occur.

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

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Chupadera springsnail in this section of the final rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features;

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or 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) 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.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features essential to the conservation of the species and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

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 determine 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, or other unpublished materials and expert opinion or personal knowledge.

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 required for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that the Chupadera springsnail is threatened by collection, and it is unlikely to experience increased threats by identifying critical habitat. In the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, an area has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. Lands designated as critical habitat that are subject to Federal actions may trigger the section 7 consultation requirements. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of the general public of the importance of protecting habitat.

At present, the only known extant population of the Chupadera springsnail occurs on private lands in the United States. The species currently is not known to occur on Federal lands or lands under Federal jurisdiction. However, lands designated as critical habitat, whether or not under Federal jurisdiction, may be subject to Federal actions that trigger the section 7 consultation requirement, such as the granting of Federal monies or Federal permits.

We reviewed the available information pertaining to habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is prudent for the Chupadera springsnail because, as discussed above, there is no information to indicate that identification of critical habitat will result in increased threats to the species, and information indicates that designation of critical habitat will be beneficial to the species.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available, and the available information is sufficient for us to identify areas to designate as critical habitat. Therefore, we conclude that the designation of critical habitat is determinable for the Chupadera springsnail.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species 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 historic, geographical, and ecological distributions of a species.

We consider the specific physical and biological features essential to the

conservation of the species and laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We derive the specific physical and biological features for the Chupadera springsnail from the biological needs of this species as described above (see *Species Information*).

Based on the needs and our current knowledge of the life history, biology, and ecology of the species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the Chupadera springsnail requires the following physical and biological features:

Space for Individual and Population Growth and for Normal Behavior

The Chupadera springsnail occurs where water emerges from the ground as a free-flowing spring and springbrook. Within the spring ecosystem, proximity to the springhead is important because of the appropriate stable water chemistry and temperature, substrate, and flow regime. The Chupadera springsnail occurs in one spring in an open foothill meadow at 1,620 m (5,315 ft) elevation. The species has been found in the springhead and springbrook. Historically, it was also found at an unnamed spring 0.5 km (0.3 mi) from this location. Therefore, based on the information above, we identify unpolluted spring water (free from contamination) emerging from the ground and flowing on the surface as a physical and biological feature for the Chupadera springsnail.

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

Taylor (1987, p. 26) found Chupadera springsnails on pebbles and cobbles interspersed with sand, mud, and aquatic plants. Individuals were abundant in flowing water on stones, dead wood, and among vegetation on firm surfaces that had an organic film (periphyton). Chupadera springsnail was not found in the impoundment created by damming the springbrook (Taylor 1987, p. 26). From data collected in 1997 and 1998, Lang (2009, p. 1) determined the springsnails were found in water velocities that ranged from 0.01 to 0.19 m/s (0.03 to 0.6 ft/s).

Chupadera springsnails consume periphyton on submerged surfaces. Spring ecosystems occupied by Chupadera springsnails must support the periphyton upon which springsnails graze. Therefore, based on the information above, we identify periphyton (an assemblage of algae, bacteria, and microbes) and decaying organic material as a physical and biological feature for the Chupadera springsnail.

Sites for Breeding, Reproduction, and Rearing of Offspring

Substrate characteristics influence the productivity of the springsnails. Suitable substrates are typically firm, characterized by cobble, gravel, sand, woody debris, and aquatic vegetation such as watercress. Suitable substrates increase productivity by providing suitable egg-laying sites and providing food resources. Therefore, based on the information above, we identify substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators as a physical and biological feature for the Chupadera springsnail.

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

The Chupadera springsnail has a restricted geographic distribution. Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain the spring systems upon which the Chupadera springsnail depends. This means protection from disturbance caused by exposure to cattle grazing, water contamination, water depletion, springhead alteration, or nonnative species. The Chupadera springsnail must, at a minimum, sustain its current distribution for the one remaining population to remain viable.

As discussed above (see Factor *E. Other Natural or Manmade Factors Affecting Its Continued Existence*), introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). Because the distribution of the Chupadera springsnail is so limited, and its habitat so restricted, introduction of certain nonnative species into its habitat could be devastating. Potentially harmful nonnative species include saltcedar, common reed, Russian thistle, and the red-rim melania. Therefore, based on the information above, we identify nonnative species either absent or present at low population levels as a physical and biological feature for the Chupadera springsnail.

Primary Constituent Elements for the Chupadera Springsnail

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Chupadera springsnail in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that 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 primary constituent elements specific to Chupadera springsnail are springheads, springbrooks, seeps, ponds, and seasonally wetted meadows containing:

(1) Unpolluted spring water (free from contamination) emerging from the ground and flowing on the surface;

(2) Periphyton (an assemblage of algae, bacteria, and microbes) and decaying organic material for food;

(3) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(4) Nonnative species either absent or present at low population levels.

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. Threats to the physical and biological features essential to the conservation of the Chupadera springsnail include loss of spring flows due to groundwater pumping and drought, inundation of springheads due to pond creation, degradation of water quality and habitat due to livestock grazing or other alteration of water chemistry, and the introduction of nonnative species. A more complete discussion of the threats to the Chupadera springsnail and its habitats can be found in ''Summary of Factors Affecting the Species'' above.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review all available information pertaining to the habitat

requirements of the species. As part of our review, in accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating areas outside those currently occupied, as well as those occupied at the time of listing, are necessary to ensure the conservation of the species. We designate areas outside the geographical area occupied by a species at the time of listing only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

For the purpose of designating critical habitat for Chupadera springsnail, we define the occupied area based on the most recent surveys available, which are from 1999. There is only one area currently occupied. We then evaluated whether this area contains the primary constituent elements for the Chupadera springsnail and whether they require special management. Next we considered areas historically occupied, but not currently occupied. There is only one area where the Chupadera springsnail historically occurred but is not currently occupied. We evaluated this area to determine whether it was essential for the conservation of the species.

To determine if the one currently occupied area (Willow Spring) contains the primary constituent elements, we assessed the life-history components of the Chupadera springsnail as they relate to habitat. The springsnail requires unpolluted spring water in the springheads and springbrooks; periphyton and decaying organic material for food; rock-derived substrates for egg laying, maturation, feeding, and escape from predators; and absence of nonnative species.

To determine if the one site historically occupied by the Chupadera springsnail (unnamed spring) is essential for the conservation of the Chupadera springsnail, we considered: (1) The importance of the site to the overall status of the species to prevent extinction and contribute to future recovery of the Chupadera springsnail; (2) whether the area could be restored to contain the necessary physical and biological features to support the Chupadera springsnail; and (3) whether a population of the species could be reestablished at the site.

We plotted the known occurrences of the Chupadera springsnail in springheads and springbrooks on 2007 U.S. Geological Survey (USGS) Digital Ortho Quarter Quad maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. There are no known developed areas such as buildings, paved areas, and other structures that lack the biological features for the springsnail within the designated critical habitat areas.

In summary, we are designating critical habitat in areas that we determined are occupied at the time of listing and contain sufficient primary constituent elements to support life-history functions essential to the conservation of the species and require special management, and areas outside the geographical area occupied at the time of listing that we determine are essential for the conservation of Chupadera springsnail.

Final Critical Habitat Designation

We are designating two units of critical habitat for the Chupadera springsnail. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Chupadera springsnail. The two areas we designate as critical habitat are: (1) Willow Spring, which is currently (at the time of listing) occupied and contains the primary constituent elements; and (2) unnamed spring, which is not currently (at the time of listing) occupied but is determined to be essential for the conservation of the species. The approximate area and land ownership of each critical habitat unit is shown in Table 1.

TABLE 1—OWNERSHIP AND APPROXIMATE AREA OF CRITICAL HABITAT UNITS FOR CHUPADERA SPRINGSNAIL

Critical habitat unit	Land ownership by type	Estimated size of unit in hectares (acres)
1. Willow Spring Unit.	Private	0.5 (1.4)
2. Unnamed Spring Unit.	Private	0.2 (0.5)
Total	.....	0.7 (1.9)

We present below brief descriptions of the units and reasons why they meet the definition of critical habitat for Chupadera springsnail.

Unit 1: Willow Spring Unit

Unit 1 consists of approximately 0.5 ha (1.4 ac) in Socorro County, New Mexico. When last visited in 1999, the Willow Spring Unit was a wet meadow with a springbrook that runs approximately 38 m (125 ft) before being impounded by a berm that crosses the meadow. The entire unit is in private ownership. We are designating a single critical habitat unit that encompasses Willow Spring and includes the springhead, springbrook, small seeps and ponds, and the seasonally wetted meadow associated with the spring downstream to the artificial berm. This spring is located within the drainage of the Rio Grande, approximately 2.7 km (1.7 mi) west of Interstate Highway 25.

The Willow Spring site has documented occupancy of Chupadera springsnail from 1979 to 1999 (Taylor 1987 p. 24; NMDGF 2004, p. 45). Based on observations in 2011 provided by the landowner (Highland Springs, LLC 2011, p. 3), we presume the species persists at Willow Spring. The Willow Spring Unit contains all the primary constituent elements to support all of the Chupadera springsnail's life processes. Threats to the primary constituent elements in this unit that may require special management include the effects of livestock grazing, groundwater depletion, springhead or springbrook modification, water contamination, and potential effects from nonnative species.

Unit 2: Unnamed Spring Unit

Unit 2 consists of approximately 0.2 ha (0.5 ac) in Socorro County, New Mexico. The entire unit is privately owned. We are designating a single critical habitat unit that encompasses the unnamed spring and includes the springhead, springbrook, small seeps and ponds, and the seasonally wetted meadow associated with the spring. This spring is located within the drainage of the Rio Grande, approximately 2.7 km (1.7 mi) west of Interstate Highway 25, and about 0.5 km (0.3 mi) north of Willow Spring.

The Unnamed Spring Unit is currently unoccupied by the Chupadera springsnail, but it was historically occupied (Stefferud 1986, p. 1; Taylor 1987, p. 24; Lang 1998, p. 36). The spring appears to share a common aquifer and similarities in water chemistry, temperature, and hydrology with Willow Spring. When developing conservation strategies for species whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity, it is important to maintain multiple populations as opposed to protecting a single population (Murphy *et al.* 1990, pp. 41–51). Having replicate populations is a recognized conservation strategy to protect species from extinction due to catastrophic events (Soule 1985, p. 731). This area is important to prevent extinction of the Chupadera springsnail. Some habitat restoration work may be needed before Chupadera springsnail

could be reintroduced to the Unnamed Spring Unit; however, creating a second population is important for the long-term persistence of the species. The Unnamed Spring Unit is essential for the conservation of the species because it is a site where the Chupadera springsnail can be reintroduced.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuits have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (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 statutory 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 remain functional (or retain those physical and biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, 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 to destroy or adversely modify its critical habitat. 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. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or 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.

Application of the ''Adverse Modification'' Standard

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.

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 and biological features to an extent that appreciably reduces the conservation value of critical habitat for Chupadera springsnail. 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, will result in consultation for the Chupadera springsnail. These activities include, but are not limited to:

(1) Actions that would reduce the quantity of water flow within the spring systems designated as critical habitat.

(2) Actions that would modify the springheads within the spring systems designated as critical habitat.

(3) Actions that would degrade water quality within the spring systems designated as critical habitat.

(4) Actions that would reduce the availability of coarse, firm aquatic substrates within the spring systems designated as critical habitat.

(5) Actions that would reduce the occurrence of native aquatic algae or periphyton or both within the spring systems designated as critical habitat.

(6) Actions that would introduce, promote, or maintain nonnative species within the spring systems designated as critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan by November 17, 2001. This plan integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the critical habitat designation, and, therefore, there are no exemptions under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. 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.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on January 20, 2012 (77 FR 2943), based on the proposed rule published on August 2, 2011 (76 FR 46218). We accepted comments on the draft economic analysis until February 21, 2012. Following the close of the comment period, a final analysis of the potential economic effects of the designation was completed in April 2011, taking into consideration the public comments and any new information. No comments were received during the final comment period (77 FR 25668; May 1, 2012).

The intent of the final economic analysis is to identify and analyze the potential economic impacts associated with the critical habitat designation for the Chupadera springsnail. The final economic analysis describes the economic impacts of all potential conservation efforts for the Chupadera springsnail; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks at baseline impacts incurred from the listing of the species and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat. For a further description of the methodology of the analysis, see the ''Framework for the Analysis'' section of the final economic analysis.

The final economic analysis provides estimated costs of the foreseeable potential economic impacts of the final critical habitat designation for the Chupadera springsnail. It identifies potential incremental costs as a result of the final critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The final economic analysis quantifies economic impacts of Chupadera springsnail conservation efforts associated with residential development and ranch activities.

Existing and planned subdivision development in the area can lead to groundwater depletion, threatening the springsnail and its habitat by reducing water flow at the spring that supports the species. Residential activities can also lead to modification of the area around the springhead and springbrook, causing habitat degradation through inundation and changes in water flow and chemistry. However, a Federal nexus consultation under section 7 of the Act is unlikely to exist, as each parcel will have its own groundwater well, which is regulated by the New Mexico Office of the State Engineer with no Federal involvement. Unit 1 is not slated for development; therefore, it is unlikely the landowners will apply for a permit under section 404 of the Clean Water Act. We are unaware of the plans for Unit 2, but we believe that any development would avoid the spring and therefore avoid the need for a section 404 permit. Because there are no foreseeable activities with a Federal nexus, the draft economic analysis found no economic impact of the designation of critical habitat beyond a possible ''stigma effect'' to land values. This stigma effect arises from the perception of landowners that designation of critical habitat may impede future land development and, therefore, depress land values. Our economic analysis was unable to quantify the economic value of any possible stigma effects.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the Chupadera springsnail based on economic impacts. A copy of the final economic analysis with supporting documents may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES**) or for downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the Chupadera springsnail are not owned or managed by the Department of Defense, and therefore, anticipate no impact to national security, and the Secretary is not exerting his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We

consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether 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. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the Chupadera springsnail, and the final designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs from this critical habitat designation. In addition, we considered other relevant impacts during preparation of the environmental assessment pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (see Required Determinations, *National Environmental Policy Act (NEPA)* below) and found no other significant impacts that would warrant our consideration for excluding any areas from critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 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 of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our final economic analysis of the critical habitat designation, we provide our analysis for determining whether the final rule will result in 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 to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the designation of critical habitat for the Chupadera springsnail will affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential development and ranch activities. In order to determine whether it is appropriate for our agency to certify that this final rule will not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Chupadera springsnail is present, Federal agencies will be, as of the effective date of this rule (see **DATES**), required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the consultation process.

In the final economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the designation of critical habitat for the Chupadera springsnail. Information in the final economic analysis and final environmental assessment indicates the critical habitat designation will have no effect on any small entities. Please refer to the final economic analysis of the final critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the final designation will result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified no small entity that may be impacted by the final critical habitat designation. For this reason, and based on currently available information, we certify that the final critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of

the economic effects of this designation is described in the final economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 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 finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Chupadera springsnail 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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) 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 [T]ribal 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.

(b) We do not expect this rule to significantly or uniquely affect small governments because the critical habitat designation is on private land. 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. Therefore, we do not believe a Small Government Agency Plan is required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Chupadera springsnail in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Chupadera springsnail does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in New Mexico. We received comments from the New Mexico Department of Game and Fish and have addressed them in the Summary of Comments and Recommendations section of this rule. The designation of critical habitat in areas currently occupied by the Chupadera springsnail imposes no additional restrictions to those that will be put in place on the effective date of this rule (see **DATES**) and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological 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 local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), this rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the executive order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of the Chupadera springsnail.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget 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 (NEPA)

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 as defined by NEPA (42 U.S.C. 4321 *et seq.*) 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)). However, because the range of the Chupadera springsnail is in a State within the Tenth Circuit under the ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we prepared a draft environmental assessment. We made the draft environmental assessment available for public review on January 20, 2012 (77 FR 2943) and accepted comments on the draft environmental assessment until February 21, 2012, and again between May 1, 2012, and May 16, 2012 (77 FR 25668). Following the close of the final comment period, a final environmental assessment of the potential environmental consequences associated with the proposed critical habitat designation for the Chupadera springsnail was completed. The final environmental assessment found that designating critical habitat for the Chupadera springsnail within the two units will not have significant impacts to the human environment and finding of no significant impact was made.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of the Chupadera springsnail. Therefore, we are not designating critical habitat for the Chupadera springsnail 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 New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Springsnail, Chupadera'' to the List of Endangered and Threatened Wildlife in alphabetical order under SNAILS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Springsnail, Chupadera	*Pyrgulopsis chupaderae.*	U.S.A. (NM)	NA	E		17.95(f)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95, amend paragraph (f) by adding an entry for ''Chupadera Springsnail (*Pyrgulopsis chupadera*e)'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Chupadera Springsnail (*Pyrgulopsis chupaderae*)

(1) Critical habitat units are depicted for Socorro County, New Mexico, on the map below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the Chupadera springsnail consist of springheads, springbrooks, seeps, ponds, and seasonally wetted meadows containing:

(i) Unpolluted spring water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Periphyton (an assemblage of algae, bacteria, and microbes) and decaying organic material for food;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(iv) Nonnative species either absent or present at low population levels.

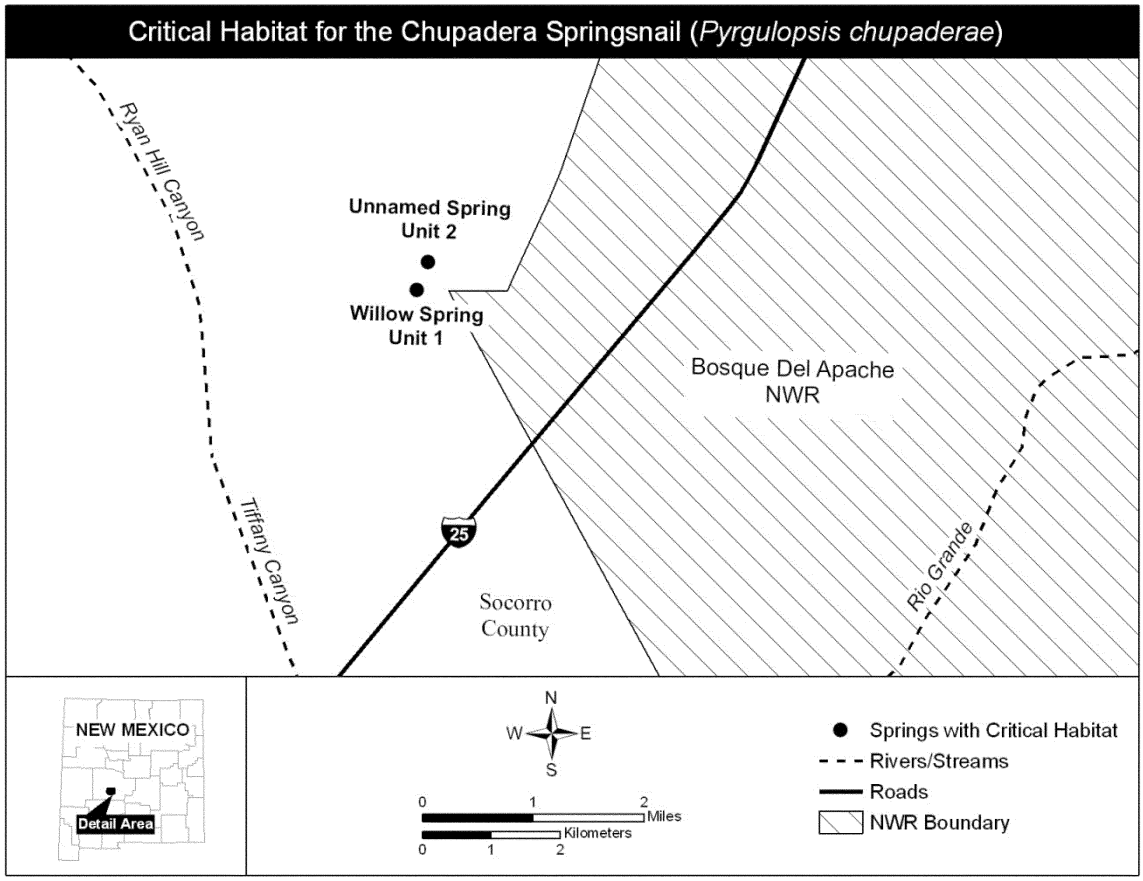
(3) Critical habitat does not include manmade structures (such as buildings, roads, and other paved areas, and the land on which they are located) existing on the effective date of this rule.

(4) Critical habitat map units were plotted on 2007 USGS Digital Ortho Quarter UTM coordinates in ArcMap (Environmental Systems Research Institute, Inc.), a computer GIS program

(5) Unit 1: Willow Spring, Socorro County, New Mexico.

(i) The critical habitat area includes the springhead, springbrook, small seeps and ponds, seasonally wetted meadow, and all of the associated spring features. This area is approximately 0.5 ha (1.4 ac) around the following coordinates: Easting 316889, northing 3743013 (Universal Transverse Mercator Zone 13 using North American Datum of 1983).

(ii) Map of Units 1 and 2 follows:



(6) Unit 2: Unnamed Spring, Socorro County, New Mexico.

(i) The critical habitat area includes the springhead, springbrook, small seeps and ponds, seasonally wetted meadow, and all of the associated spring features. This area is approximately 0.2 ha (0.5 ac) around the following coordinates: Easting 317048, northing 3743418 (Universal Transverse Mercator Zone 13 using North American Datum of 1983).

(ii) Map of Unit 2 is provided at paragraph (5)(ii) of this entry.

* * * * *

Dated: June 19, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16988 Filed 7–11–12; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 77, No. 134
Thursday, July 12, 2012

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 70, and 72

[NRC–2011–0162]

Decommissioning Planning During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting, webinar and opportunity to provide comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking input from the public, licensees, Agreement States, non-Agreement States, and other stakeholders on revised draft regulatory guide (DG) 4014, ''Decommissioning Planning During Operations.'' This guide describes a method that the NRC staff considers acceptable for use in complying with the NRC's Decommissioning Planning Rule. The NRC will hold a public meeting and concurrent Webinar to facilitate the public's and other stakeholders' comments.

DATES: The public meeting and Webinar will be held at the U.S. Nuclear Regulatory Commission, Two White Flint North, Room T–8A01, 11554 Rockville Pike, Rockville, Maryland 20852 on July 12, 2012, from 11:30 a.m. to 4:00 p.m. (EDT). The revised draft guide will be issued by a separate notice that will contain information on submitting written comments.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6712; email: *james.shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 2011, the NRC published the Decommissioning Planning Rule (DPR) (June 17, 2011, 76 FR 33512). The DPR applies to the operational phase of a licensed facility, and requires licensees to operate in a way to minimize spills, leaks, and other unplanned releases of radioactive contaminants into the environment. It also requires licensees to check periodically for radiological contamination throughout the site, including subsurface soil and groundwater. Subsequently, to describe and make available to the public information on methods that are acceptable to the NRC staff for implementing this part of the regulations, the NRC published for comment DG–4014, ''Decommissioning Planning During Operations'' (December 13, 2011, 76 FR 77431). The NRC received more than 100 comments on the draft guide resulting in modifications to the draft on which the NRC staff believes public comment is appropriate. Therefore, the NRC is issuing a revision to the draft guidance (ML12179A246) that responds to the comments on the initial version.

II. Discussion

Many of the comments provided during the initial comment period on DG–4014 stated that more information about specific actions for different types of licensee should be included in the regulatory guide. Additionally, some of the comments also called for more information on how a licensee could determine in which category it fell and what actions it must take. Some commenters indicated that the NRC should identify conditions that would, in effect, exempt certain licensees with limited activities or inventories from the sampling requirements of the rule. One comment stated the guidance should not, *de facto,* impose backfit requirements on licensees, and others stated the guide should address restricted release of a site. In response to the comments received, the NRC staff has revised the draft guide.

III. Public Webinar

To facilitate the understanding of the public and other stakeholders of the issues addressed in the draft guide and the procedures for the submission of comments, the NRC staff has scheduled a public Webinar from 11:30 a.m. to 4:30 p.m. (EDT) on July 12, 2012. Webinar participants will be able to view the presentation slides prepared by the NRC and electronically submit comments over the Internet. Participants must register to participate in the Webinar. Registration information may be found in the meeting notice (ML12179A347). The meeting notice is also available on the NRC's public Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Additionally, the final agenda for the public Webinar and the revised draft regulatory guide will be posted no fewer than 10 days prior to the Webinar at this Web site. Those who are unable to participate via Webinar may also participate via teleconference. For details on how to participate via teleconference, please contact Sarah Achten, telephone: 301–415–6009; email: *sarah.achten@nrc.gov;* or T.R. Rowe, telephone: 301–415–8008; email: *t.rowe@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of July 2012.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

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. 2012–17014 Filed 7–11–12; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1254

RIN 2590–AA53

Enterprise Underwriting Standards

AGENCY: Federal Housing Finance Agency.

ACTIONS: Proposed rulemaking; extension of comment period.

SUMMARY: On June 15, 2012, the Federal Housing Finance Agency (FHFA) published in the **Federal Register** a notice of proposed rulemaking for public comment concerning underwriting standards for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), relating to mortgage assets affected by Property Assessed Clean Energy (PACE) programs. The comment period was to end on July 30, 2012 (45 days after publication of the proposal in the

Federal Register). This document extends the comment period to September 13, 2012 to allow the public additional time to comment on the proposed rule.

DATES: Written comments must be received on or before September 13, 2012. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA53, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''RIN 2590–AA53'' in the subject line of the message.
- *Email:* Comments to Alfred M. Pollard, General Counsel may be sent by email to *RegComments@fhfa.gov*. Please include ''RIN 2590–AA53'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA53, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA53, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 649–3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 15, 2012, FHFA published for comment in the **Federal Register** a proposed rule, and invited comments. *See* 77 FR 36086. The comment period for the proposed rule was originally scheduled to close on July 30, 2012; but, FHFA determined to extend the comment period an additional 45 days, changing the deadline for submitting comments on the proposed rule from July 30, 2012 to September 13, 2012.

Dated: July 6, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–17049 Filed 7–11–12; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0617; Airspace Docket No. 12–ANM–18]

Proposed Establishment of Class E Airspace; Fort Garland, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Trinchera Ranch Airstrip Airport, Fort Garland, CO. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Trinchera Ranch Airstrip Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 27, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0617; Airspace Docket No. 12–ANM–18, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0617 and Airspace Docket No. 12–ANM–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0617 and Airspace Docket No. 12–ANM–18'' . The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace at Trinchera Ranch Airstrip Airport, Fort Garland, CO to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Trinchera Ranch Airstrip Airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Fort Garland, CO [New]

Trinchera Ranch Airstrip Airport, CO
(Lat. 37°27′50″ N., long. 105°24′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Trinchera Ranch Airstrip Airport; that airspace extending upward from 1,200 feet above the surface in an area bounded by a line beginning at lat. 37°38′00″ N., long. 105°31′00″ W.; to lat. 37°33′00″ N., long. 105°12′00″ W.; to lat. 37°24′00″ N., long. 105°07′00″ W.; to lat. 37°04′00″ N., long. 105°23′30″ W.; to lat. 37°03′00″ N., long. 105°43′00″ W.; to lat. 37°15′00″ N., long. 105°50′00″ W.; to lat. 37°29′00″ N., long. 105°42′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on July 3, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–16948 Filed 7–11–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On April 28, 2011, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published in the **Federal Register** a notice of proposed rulemaking that would establish initial and variation margin requirements on uncleared swaps for swap dealers (''SDs'') and major swap participants (''MSPs'').[1] In October 2011, the Basel Commission on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO'') established a Working Group on Margin Requirements (''WGMR'') to develop harmonized international standards for uncleared swaps. BCBS and IOSCO recently published a consultative paper prepared by the WGMR that outlines possible margin requirements for non-centrally cleared derivatives (''consultative paper'').[2] The Commission is extending the comment period for its proposed margin rules for uncleared swaps for swap dealers and major swap participants in order to give interested parties the opportunity to comment on the consultative paper and the CFTC's proposed rules concurrently.

DATES: Comments must be submitted on or before September 14, 2012.

ADDRESSES: You may submit comments, identified by RIN 3038–AC97, and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the web site.
- Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as mail above.
- Federal eRulemaking Portal: *http://www.regulations.gov*.

Please submit your comments using only one method.

[1] *See* 76 FR 23732.

[2] The WGMR is comprised of representatives from over 25 domestic and international regulatory authorities, including the CFTC.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, *jlawton@cftc.gov,* Division of Clearing and Risk, or Jason A. Shafer, Attorney Advisor, Division of Swap Dealer and Intermediary Oversight, *jshafer@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On April 28, 2011, the Commission published in the **Federal Register** a notice of proposed rulemaking that would establish initial and variation margin requirements on uncleared swaps for SDs and MSPs.[4] In October 2011, BCBS and IOSCO established the WGMR to develop harmonized international standards for uncleared swaps. BCBS and IOSCO recently published a consultative paper prepared by the WGMR that outlines possible margin requirements for non-centrally cleared derivatives.[5] The consultative paper addresses a number of topics, including: (i) The instruments that would be subject to margin requirements; (ii) the market participants to be subject to margin requirements; (iii) initial margin and variation margin methodology; (iv) eligible collateral; (v) treatment of provided margin; (vi) treatment of inter-affiliate transactions; and vii) treatment of cross-border transactions.[6]

BCBS and IOSCO are requesting comment on the initial proposals set forth in the consultative paper. After reviewing and evaluating any comments received, the WGMR will issue final policy recommendations for margin requirements for non-centrally cleared derivatives.[7] As part of the international effort to implement consistent global standards for margin requirements for non-centrally cleared derivatives, the CFTC will consider the final policy recommendations set forth by the WGMR when adopting its final rules for margin for uncleared swaps and may adapt its final rules to conform with the final policy recommendations set forth by BCBS and IOSCO. Accordingly, the Commission believes it is appropriate to extend the comment period for its proposed margin requirements in order to give interested parties the opportunity to comment on the consultative paper and the CFTC's proposed rule concurrently.

Therefore, the Commission is extending the comment period until September 14, 2012, for all aspects of its proposed margin rules on uncleared swaps and specifically requests quantitative data and analysis on the comparative costs and benefits of the CFTC's proposed rule and the initial proposals set forth in the consultative paper.

Issued by the Commission, this 5th day of July 2012.

David Stawick,

Secretary of the Commission, Commodity Futures Trading Commission.

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix 1—Statement of Chairman Gary Gensler

I support the formal reopening of the comment period on the CFTC's initial margin proposal so that we can hear further from market participants in light of work being done to internationally harmonize an approach to margin.

The CFTC has been working with the Federal Reserve, the other U.S. banking regulators, the Securities and Exchange Commission and international regulators and policymakers to align margin requirements for uncleared swaps. I think it is essential that we align these requirements globally, particularly between the major market jurisdictions. The international approach to margin requirements in the consultative paper (sponsored by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions) released today is consistent with the approach the CFTC laid out in its margin proposal last year. It would lower the risk of financial entities, promote clearing and help avoid regulatory arbitrage.

[FR Doc. 2012–16983 Filed 7–11–12; 8:45 am]

BILLING CODE 6351–01–P

[3] *See* 17 CFR 145.9.

[4] *See* 76 FR 23732.

[5] The WGMR is comprised of representatives from over 25 domestic and international regulatory authorities, including the CFTC.

[6] The consultative paper is available on the Bank for International Settlements (''BIS'') Web site (*www.bis.org*), the IOSCO Web site (*www.iosco.org*) and the CFTC Web site (*www.cftc.gov*).

[7] Concurrently with the comment period for the consultative paper, BCBS and IOSCO also will conduct a quantitative impact study (''QIS'') to assess the costs and benefits of margin requirements. The results of the QIS will be considered along with the comments submitted on the consultative paper in formulating a final joint proposal on non-centrally cleared derivatives.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AD85

Exemptive Order Regarding Compliance With Certain Swap Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed exemptive order and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to grant, pursuant to section 4(c) of the Commodity Exchange Act (''CEA''), temporary exemptive relief in order to allow non-U.S. swap dealers and non-U.S. major swap participants to delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder), subject to specified conditions. Additionally, with respect to transaction-level requirements of the CEA (and Commission regulations promulgated thereunder), the relief would allow non-U.S. swap dealers and non-U.S. major swap participants, as well as foreign branches of U.S. swap dealers and major swap participants, to comply only with those requirements as may be required in the home jurisdiction of such non-U.S. swap dealers and non-U.S. major swap participants (or in the case of foreign branches of a U.S. swap dealer or U.S. major swap participant, the foreign location of the branch) for swaps with non-U.S. counterparties. This relief would become effective concurrently with the date upon which swap dealers and major swap participants must first apply for registration and expire 12 months following the publication of this proposed order in the **Federal Register**. Finally, U.S. swap dealers and U.S. major swap participants may delay compliance with certain entity-level requirements of the CEA (and

Commission regulations promulgated thereunder) from the date upon which swap dealers and major swap participants must apply for registration until January 1, 2013.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD85, by any of the following methods:

- The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposal will be retained in the public comment file and will be considered as required under the Administrative Procedures Act[2] and other applicable laws, and may be accessible under the Freedom of Information Act.[3]

FOR FURTHER INFORMATION CONTACT: Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, (202) 418–5977, *gbarnett@cftc.gov;* Jacqueline H. Mesa, Director, Office of International Affairs, (202) 418–5386, *jmesa@cftc.gov;* Carlene S. Kim, Assistant General Counsel, Office of General Counsel, (202) 418–5613, *ckim@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[4] which amended the CEA and established a new regulatory framework for swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (each, an ''SD'') and major swap participants (each, an ''MSP''); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (4) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight.

To implement the Dodd-Frank Act, the Commission has promulgated rules pursuant to the various new provisions of the CEA, including those specifically applicable to SDs and MSPs. Examples of such provisions include CEA section 4s(a) (governing registration of SDs and MSPs)[5] and section 4s(j) (requiring SDs and MSPs to establish a comprehensive internal risk management program).[6] Rules to implement other requirements in the provisions of the CEA have been proposed but not finalized. These include CEA section 4s(e) (governing capital and margin requirements for SDs and MSPs)[7] and CEA section 4s(i) (relating to the timely and accurate processing and netting of swaps entered by SDs and MSPs).[8]

Further, the Commission approved for publication a proposed interpretive guidance and policy statement (''Cross-Border Interpretive Guidance'') on the application of the CEA's swap provisions and the implementing Commission regulations to cross-border activities and transactions.[9] A brief overview of the Cross-Border Interpretive Guidance follows.

II. Cross-Border Interpretive Guidance

To provide greater clarity to market participants regarding their obligations under the Dodd-Frank Act, the Commission has published the Cross-Border Interpretive Guidance. Broadly speaking, the Cross-Border Interpretive Guidance sets forth the manner in which the Commission proposes to interpret section 2(i) of the CEA[10] as it applies to the requirements under the Dodd-Frank Act and the Commission's regulations promulgated thereunder regarding cross-border swap activities.

Specifically, in the Cross-Border Interpretive Guidance, the Commission described the general manner in which it proposes to consider: (1) Whether a non-U.S. person's swap dealing activities are sufficient to require registration as a ''swap dealer'',[11] as further defined in a joint release adopted by the Commission and the SEC (collectively, the ''Commissions''); (2) whether a non-U.S. person's swap positions are sufficient to require registration as a ''major swap participant'',[12] as further defined in a joint release adopted by the Commissions;[13] and (3) the treatment of foreign branches, agencies, affiliates, and subsidiaries of U.S. SDs and of U.S. branches of non-U.S. SDs. The Cross-Border Interpretive Guidance also proposes, in certain circumstances, to permit a non-U.S. SD or non-U.S. MSP to comply with comparable and comprehensive foreign regulatory requirements in order to satisfy applicable statutory and regulatory requirements under Title VII of the Dodd-Frank Act.[14] Finally, the Cross-Border Interpretive Guidance sets forth the manner in which the Commission proposes to interpret section 2(i) of the CEA as it applies to the clearing,

[1] *See* 17 CFR 145.9.

[2] 5 U.S.C. 551, *et seq.*

[3] 5 U.S.C. 552.

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[5] 7 U.S.C. 6s(a).

[6] 7 U.S.C. 6s(j).

[7] 7 U.S.C. 6s(e).

[8] 7 U.S.C. 6s(i).

[9] [CITE TO THE CB GUIDANCE RELEASE]

[10] Section 722(d) of the Dodd-Frank Act, which amended the CEA to add a new section 2(i), provides that the swaps provisions of the CEA apply to cross-border transactions and activities when certain conditions are met, namely, when such activities have a ''direct and significant'' connection with activities in, or effect on, commerce in the United States or when they contravene Commission rulemaking. *See* 7 U.S.C. 2(i).

[11] 7 U.S.C. 1a(49).

[12] 7 U.S.C 1a(33).

[13] *See* ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant'; Final Rule, 77 FR 30596, May 23, 2012.

[14] The Cross-Border Interpretive Guidance does not address the scope of the Commission's authority under CEA section 2(i) over non-swap agreements, contracts, transactions or markets within the Commission's jurisdiction or persons who participate in or operate those markets.

trading, and certain reporting requirements under the Dodd-Frank Act with respect to swaps between counterparties that are not SDs or MSPs.

III. Proposed Relief

A. Scope of Relief

In order to ensure an orderly transition to the Dodd-Frank Act's regulatory regime and to provide certainty to market participants and in response to commenters' requests,[15] the Commission is proposing to provide temporary exemptive relief pursuant to section 4(c) of the CEA.[16] Specifically, the relief would allow non-U.S. SDs and non-U.S. MSPs [17] to delay compliance with certain Entity-Level Requirements (as defined below) under the Dodd-Frank Act (and the Commission's regulations thereunder), subject to specified conditions described herein. Under the proposed relief, non-U.S. SDs and non-U.S. MSPs would be afforded additional time to prepare for the application of the Entity-Level Requirements with assurances that they would not be in violation of the CEA as a result. This would, in turn, facilitate an orderly transition to the Entity-Level Requirements of the Dodd-Frank Act regulatory regime, while minimizing undue disruptions to current market operations.

An exception to the foregoing relief from the Entity-Level Requirements relates to the Swap Data Repository (''SDR'') reporting requirement [18] and part 20 of the Commission's regulations (''Large Trader Reporting''). Specifically, non-U.S. SDs and non-U.S.MSPs would be required to comply with the SDR reporting requirement for all swaps with U.S. person counterparties (''U.S. counterparties''), upon its compliance date. Under the proposed exemptive order, the reporting obligations of an SD under the Large Trader Reporting regulations would apply (or not apply) in the same manner as the SDR reporting requirements would apply (or not apply) to such SD.

However, under the proposed exemptive order, non-U.S. SDs and non-U.S. MSPs that are not affiliates or subsidiaries of a SD would be permitted to delay compliance with the SDR reporting requirement for swaps with non-U.S. counterparties. The Commission believes that this approach would facilitate such registrants' phasing in of their compliance with the SDR reporting requirement, without substantially undermining the regulatory objectives of SDR reporting. The Commission is not proposing to extend similar relief to non-U.S. SDs and non-U.S. MSPs that are affiliates or subsidiaries of a U.S. SD given the Commission's supervisory interest in data related to the swap activities of non-U.S. SDs and non-U.S. MSPs that are part of a U.S.-based affiliated group.

The Commission also proposes to grant, with respect to Transaction-Level Requirements (as defined below), temporary relief to non-U.S. SDs and non-U.S. MSPs, as well as foreign branches of U.S. SDs and U.S. MSPs, for swaps with a non-U.S. counterparty in order that they comply only with the regulations as may be required in the home jurisdiction of the non-U.S. SD or non-U.S. MSP (or in the case of foreign branches of a U.S. SD or a U.S. MSP, the foreign location of the branch).[19] With respect to swaps with a U.S. counterparty, however, these registrants would be required to comply with all applicable Transaction-Level Requirements that are in effect. Given the nature of these requirements (*i.e.,* they may be applied on a transaction-by-transaction basis) and their importance to the protection of U.S. counterparties, the Commission would require non-U.S. SDs and non-U.S. MSPs, as well as foreign branches of U.S. SDs and U.S. MSPs, to comply with all applicable Transaction-Level Requirements with respect to such counterparties.[20]

The relief for non-U.S. SDs and non-U.S. MSPs (and foreign branches of U.S. SDs and U.S. MSPs with respect to Transaction-Level Requirements) would become effective on the compliance date for registration of SDs and MSPs and expire 12 months following the publication of this proposed order in the **Federal Register**. The Commission is committed to an orderly transition to the Dodd-Frank Act's regulatory regime. In furtherance of that objective, the Commission intends to consider extending the effectiveness of this exemptive relief at its expiration based on, among other things, whether and when substituted compliance with foreign regulatory requirements for non-U.S. persons is available.

With respect to U.S. SDs and U.S. MSPs, the Commission proposes to permit such registrants to delay compliance with certain Entity-Level Requirements under the Dodd-Frank Act (and the Commission's regulations thereunder) until January 1, 2013. Under the proposed relief, U.S. SDs and U.S. MSPs would be afforded additional time to prepare for the application of the Entity-Level Requirements so as to ensure an orderly transition, while minimizing undue disruptions to current market operations. This relief with respect to Entity-Level Requirements, however, does not extend to swap data recordkeeping, SDR reporting or Large Trader Reporting requirements. That is, U.S. SDs and U.S. MSPs would be required to comply with the swap data recordkeeping, SDR and Large Trader Reporting requirements for all swaps. Finally, the Commission reiterates that a U.S. person would be expected to apply for registration as an SD or MSP by the effective date of the Swap Definitional Rule.

Finally, the relief for U.S. SDs and U.S. MSPs (with respect to Entity-Level Requirements) would be effective until January 1, 2013. The Commission believes that allowing U.S. registrants additional time as specified is appropriate in light of the importance of implementing the Dodd-Frank Act regulatory regime as expeditiously as possible while taking due consideration of the need for U.S. registrants to effect an orderly transition to the new regulatory regime.

B. Conditions to Relief

Under this proposal, a non-U.S. SD or non-U.S. MSP seeking relief from the specified Entity-Level Requirements must satisfy certain conditions. First, the non-U.S. person that is required to register as an SD or MSP must apply to become registered as such when registration is required. Second, within

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[15] *See* Letter from Securities Industry and Financial Markets Association and Institute of International Bankers, dated, April 25, 2012, available on the Commission's Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

[16] 7 U.S.C. 6(c).

[17] As used in this proposed exemptive order, the term ''non-U.S. swap dealer'' refers to swap dealers that are non-U.S.-based as well as those that are foreign affiliates of a U.S. person. Similarly, the term ''non-U.S. MSP'' refers to MSPs that are non-U.S.-based, as well as foreign affiliates of a U.S. person.

[18] *See* 7 U.S.C. 2(a)(13)(G). The Commission believes that the data reported to, and collected by, SDRs will be important to its ability to effectively monitor and address the risk exposures of individual market participants (including SDs and MSPs) and the concentration of risk within the swaps market more generally.

[19] Under the proposed Cross-Border Interpretive Guidance and for purposes of this order, a foreign branch of a U.S. person is deemed a U.S. person. Accordingly, swaps entered between a foreign branch of a U.S. person with another foreign branch of a U.S. person would be subject to the Dodd-Frank Transaction-Level Requirements. The Commission solicits comments on whether, for purposes of this order, substituted compliance should be permitted for such swaps, which effectively would allow foreign branches to comply only with the regulations as may be required in the foreign location of the branches.

[20] This relief does not cover swaps between non-SDs and non-MSPs. Any such swaps involving a U.S. counterparty would be subject to applicable Dodd-Frank Act requirements as set forth in the Cross-Border Interpretive Guidance.

60 days of applying for registration, the non-U.S. applicant would be required to submit to the National Futures Association (''NFA'') a compliance plan addressing how it plans to comply, in good faith, with all applicable requirements under the CEA and related rules and regulations upon the effective date of the Cross-Border Interpretive Guidance.[21]

At a minimum, such plan would provide, for each Entity-Level and Transaction-Level Requirement, a description of: (1) Whether the non-U.S. SD or non-U.S. MSP plans to comply with each of the Entity-Level and Transaction-Level Requirements that are in effect at such time or plans to seek a comparability determination and rely on compliance with one or more of the requirements of the home jurisdiction, as applicable; and (2) to the extent that the non-U.S. SD or non-U.S. MSP would seek to comply with one or more of the requirement(s) of the home jurisdiction, a description of such requirement(s). The Commission notes that such person may modify or alter the compliance plan as appropriate, provided that they submit any such amended plan to NFA.[22]

The Commission further notes that the proposed relief does not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided in the proposed order. In addition, the proposed relief would not affect any effective date or compliance date set out in any specific Dodd-Frank Act rulemaking by the Commission.

IV. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA authorizes the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transaction from any of the provisions of the CEA (subject to certain exceptions) where the Commission determines that the exemption would be consistent with the public interest.[23] Under section 4(c)(2) of the CEA, the Commission may not grant exemptive relief unless it determines that: (1) The exemption is appropriate for the transaction and consistent with the public interest; (2) the exemption is consistent with the purposes of the CEA; (3) the transaction will be entered into solely between ''appropriate persons''; [24] and (4) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.[25] The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. In enacting section 4(c), Congress noted that the goal of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[26]

As noted earlier, the Commission is proposing to issue this relief in order to ensure an orderly transition to the Dodd-Frank Act regulatory regime and to provide greater legal certainty to market participants regarding their obligations under the CEA with respect to their cross-border activities. The proposed relief also would advance the congressional mandate concerning harmonization of international standards, consistent with section 752(a) of the Dodd-Frank Act. In that section, Congress directed that, in order to ''promote effective and consistent global regulation of swaps and security-based swaps,'' the Commission, ''as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation'' of swaps and security-based swaps.[27] The proposed relief, by providing U.S. and non-U.S. registrants the latitude necessary to develop and modify their compliance plans as the regulatory structure in their home jurisdiction changes, would promote greater regulatory consistency and coordination with international regulators.

The Commission emphasizes that the proposed order is temporary in duration and reserves the Commission's anti-fraud and anti-manipulation enforcement authority. As such, the Commission believes that the proposed order would be consistent with the public interest and purposes of the CEA. For similar reasons, the Commission believes that the proposed order would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA. Finally, the Commission believes that the order would be limited to appropriate persons within the meaning of section 4c(3)(K) since the SDs and MSPs eligible for the relief are likely to be financial institutions active in the swaps market.[28] The Commission seeks comment on whether the proposed temporary exemptive order is consistent with the public interest and the other requirements of CEA section 4(c).

V. Terms ''U.S. Person,'' ''Entity-Level Requirements,'' and ''Transaction-Level Requirements''

A. U.S. Person

In the Cross-Border Interpretive Guidance, the Commission proposes to interpret the term ''U.S. person'' by reference to the extent to which swap activities or transactions involving one or more such persons have the relevant effect on U.S. commerce. Specifically, as proposed, the term ''U.S. person'' would include, but not be limited to: (1) Any natural person who is a resident of the United States; (2) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing, in each case either (A) organized or incorporated under the laws of the United States [29] or having its principal place of business in the United States (''legal entity'') or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such

[21] Additionally, a U.S. SD or U.S. MSP whose foreign branch seeks to rely on the exemptive relief with respect to swaps with non-U.S. counterparties must submit a compliance plan addressing how it plans to comply, in good faith, with all applicable Transaction-Level Requirements under the CEA upon the expiration of this proposed exemptive order.

[22] The Commission anticipates that compliance plans would be updated on a periodic basis as new regulations are adopted and come into effect. Such updates should be submitted to NFA. Any such submission should identify the name of the registrant, the fact that the submission is made in reliance upon and pursuant to this exemptive relief, and contact name and information.

[23] 7 U.S.C. 6(c)(1).

[24] CEA section 4(c)(3), 7 U.S.C. 6(c)(3), includes within the term ''appropriate persons'' a number of specified categories of persons deemed appropriate under the CEA for entering into swaps exempted by the Commission under section 4(c). This includes persons the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

[25] CEA Section 4(c)(2), 7 U.S.C. 6(c)(2).

[26] *See* ''Notice Regarding the Treatment of Petitions Seeking Grandfather Relief for Trading Activity Done in Reliance Upon Section 2(h)(1)–(2) of the Commodity Exchange Act,'' 75 FR 56512, 56513, Sept. 16, 2010.

[27] *See* section 752(a) of the Dodd-Frank Act.

[28] CEA Section 4(c)(3)(K), 7 U.S.C. 6(c)(3)(K) (appropriate persons may include such ''other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections'').

[29] United States would mean the United States, its states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and any other territories or possessions of the United States government, its agencies or instrumentalities.

owners is a U.S. person; (3) any individual account (discretionary or not) where the beneficial owner is a U.S. person; (4) any commodity pool, pooled account, or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership or equity interest is held, directly or indirectly, by a U.S. person(s); (5) any commodity pool, pooled account, or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA; (6) a pension plan for the employees, officers, or principals of a legal entity with its principal place of business inside the United States; and (7) an estate or trust, the income of which is subject to United States income tax regardless of source.

Under the interpretation of the term ''U.S. person'' in the Cross-Border Interpretive Guidance, a foreign branch or agency of a U.S. person would be covered by virtue of the fact that it is an extension of a U.S. person. By contrast, a foreign affiliate or subsidiary of a U.S. person would be considered a non-U.S. person. Solely for purposes of the temporary exemptive relief provided in the proposed order, the Commission adopts the interpretation of the term ''U.S. person'' as set forth in the Cross-Border Interpretive Guidance.

B. Entity-Level and Transaction-Level Requirements

Solely for purposes of the temporary exemptive relief provided in the proposed order, the Commission incorporates the proposed categories of Entity-Level and Transaction-Level Requirements, as set forth in the Cross-Border Interpretive Guidance.

1. Entity-Level Requirements

In the Cross-Border Interpretive Guidance, the Commission proposes to divide the Dodd-Frank Act requirements that would apply to SDs and MSPs into those that: (1) Apply to an SD or MSP at an entity level (*i.e.,* to the firm as a whole); and (2) apply at a transactional level (*i.e.,* to specific transactions). Specifically, the entity-level requirements under Title VII of the Dodd-Frank Act and the Commission's regulations promulgated thereunder relate to: (1) Capital adequacy; (2) chief compliance officer; (3) risk management; (4) swap data recordkeeping; (5) reporting to an SDR; and (6) physical commodity swaps reporting (collectively, the foregoing requirements are referred to herein as ''Entity-Level Requirements''). The first subcategory of Entity-Level Requirements relating to capital adequacy, chief compliance officer, risk management, and swap data recordkeeping relate to risks to a firm as a whole. These requirements address and manage risks that arise from a firm's operation as an SD or MSP. Individually, they represent a key component of a firm's internal risk controls. Collectively, they constitute a firm's first line of defense against financial, operational, and compliance risks that could lead to a firm's default or failure. In short, these requirements relate to risks to a firm as a whole.

At the core of a robust internal risk controls system is the firm's capital—and particularly, how the firm identifies and manages its risk exposure arising from its portfolio of activities.[30] Equally foundational to the financial integrity of a firm is an effective internal risk management process, which must be comprehensive in scope and reliant on timely and accurate data regarding its swap activities. To be effective, such system must be under the supervision of a strong and independent function. These internal controls-related requirements—namely, the requirements relating to chief compliance officer, risk management, swap data recordkeeping—are designed to serve that end.

No less important to the financial integrity of a firm is the SDR reporting requirement. SDR reporting ensures the Commission access to the information it needs to effectively supervise the risk exposure of its registrants and, thus, serves to lower their risk of failure. Given the functions of these reporting requirements, each must be applied on a firm-wide basis, across all swaps, in order to ensure that the Commission has a comprehensive and accurate picture of its activities. Otherwise, the intended benefits of these Entity-Level Requirements would be significantly compromised, if not undermined.

Each of the Entity-Level Requirements is summarized below.

i. Capital requirements

Section 4s(e)(3)(A) of the CEA specifically directs the Commission to set capital requirements for SDs and MSPs that are not subject to the capital requirements of prudential regulators (hereinafter referred to as ''non-bank SDs and MSPs'').[31] Pursuant to section 4s(e)(3), the Commission proposed regulations, which would require non-bank SDs and MSPs to hold a minimum level of adjusted net capital (*i.e.,* ''regulatory capital'') based on whether the non-bank SD or MSP is: (1) Also a futures commission merchant (''FCM''); (2) not an FCM, but is a non-bank subsidiary of a bank holding company; or (3) neither an FCM nor a non-bank subsidiary of a bank holding company.[32]

ii. Chief Compliance Officer

Section 4s(k) requires that each SD and MSP designate an individual to serve as its chief compliance officer (''CCO'') and specifies certain duties of the CCO.[33] Pursuant to section 4s(k), the Commission recently adopted § 3.3, which requires SDs and MSPs to designate a CCO who would be responsible for administering the firm's compliance policies and procedures, reporting directly to the board of directors or a senior officer of the SD or MSP, as well as preparing and filing (with the Commission) a certified report of compliance with the CEA.[34]

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[30] By way of illustration, consistent with the purpose of the capital requirement, which is to reduce the likelihood and cost of an SD's default by requiring a financial cushion, an SD's or MSP's capital requirements would be set on the basis of its overall portfolio of assets and liabilities.

[31] *See* 7 U.S.C. 6s(e)(3)(A). Section 4s(e) of the CEA explicitly requires the adoption of rules establishing capital and margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet the capital and margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with the Commission's capital and margin regulations. *See* 7 U.S.C. 6s(e). Further, systemically important financial institutions (''SIFIs'') that are not futures commission merchants (''FCMs'') would be exempt from the Commission's capital requirements, and would comply instead with Federal Reserve Board requirements applicable to SIFIs, while non-bank (and non-FCM) subsidiaries of U.S. bank holding companies would calculate their Commission capital requirement using the same methodology specified in Federal Reserve Board regulations applicable to the bank holding company, as if the subsidiary itself were a bank holding company. The term ''prudential regulator'' is defined in CEA section 1a(39) as the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

[32] *See* 7 U.S.C. 6s(e). *See also* 76 FR 27802, May 12, 2011, available at *http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-10881a.pdf.* ''The Commission's capital proposal for [SDs] and MSPs includes a minimum dollar level of $20 million. A non-bank [SD] or MSP that is part of a U.S. bank holding company would be required to maintain a minimum of $20 million of Tier 1 capital as measured under the capital rules of the Federal Reserve Board. [An SD] or MSP that also is registered as an FCM would be required to maintain a minimum of $20 million of adjusted net capital as defined under [proposed] § 1.17. In addition, an [SD] or MSP that is not part of a U.S. bank holding company or registered as an FCM would be required to maintain a minimum of $20 million of tangible net equity, plus the amount of the [SD's] or MSP's market risk exposure and OTC counterparty credit risk exposure.'' *See id.* at 27817.

[33] *See* 7 U.S.C. 6s(k).

[34] *See* 17 CFR 3.3.

iii. Risk Management

Section 4s(j) of the CEA requires each SD and MSP to establish internal policies and procedures designed to, among other things, address risk management, monitor compliance with position limits, prevent conflicts of interest, and promote diligent supervision, as well as maintain business continuity and disaster recovery programs.[35] The Commission recently adopted implementing regulations (§§ 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, and 23.607).[36] The Commission also recently adopted § 23.609, which requires certain risk management procedures for SDs or MSPs that are clearing members of a derivatives clearing organization (''DCO'').[37]

iv. Swap Data Recordkeeping

CEA section 4s(f)(1)(B) requires SDs and MSPs to keep books and records for all activities related to their business.[38] Section 4s(g)(1) requires SDs and MSPs to maintain trading records for each swap and all related records, as well as a complete audit trail for comprehensive trade reconstructions.[39] Pursuant to these provisions, the Commission adopted §§ 23.201 and 23.203, which require SDs and MSPs to keep records including complete transaction and position information for all swap activities, including documentation on which trade information is originally recorded.[40] SDs and MSPs also must comply with part 46 of the Commission's regulations, which addresses the recordkeeping requirements for swaps entered into before the date of enactment of the Dodd-Frank Act (''pre-enactment swaps'') and data relating to swaps entered into on or after the date of enactment but prior to the compliance date of the SDR reporting rules (''transition swaps'').[41]

v. Swap Data Reporting

CEA section 2(a)(13)(G) requires all swaps, whether cleared or uncleared, to be reported to a registered SDR.[42] CEA section 21 requires SDRs to collect and maintain data related to swaps as prescribed by the Commission, and to make such data electronically available to regulators.[43] SDs and MSPs would be required to comply with part 45 of the Commission's regulations, which set forth the specific transaction data that reporting counterparties and registered entities must report to a registered SDR; and part 46, which addresses the recordkeeping requirements for pre-enactment swaps and data relating to transition swaps.

vi. Physical Commodity Swaps Reporting (Large Trader Reporting)

CEA section 4t[44] authorizes the Commission to establish a large trader reporting system for significant price discovery swaps (of which economically equivalent swaps subject to part 20 reporting are a subset) in order to implement the statutory mandate in CEA section 4a[45] for the Commission to establish position limits, as appropriate, for physical commodity swaps. Pursuant thereto, the Commission adopted part 20 rules requiring SDs, among other entities, to submit routine position reports on certain physical commodity swaps and swaptions.[46] Just as with SDR reporting, part 20 reporting serves the Dodd-Frank Act's objective to enhance regulatory oversight of the swaps market. In fact, a stated reason for the Commission's adoption of part 20 was its ability to, in effect, perform the function of physical commodity SDRs until such time as such entities are operational and have the ability to convert swaps into positions.[47]

2. Transaction-Level Requirements

The transaction-level requirements under Title VII of the Dodd-Frank Act and the Commission's regulations (proposed or adopted) include: (1) Clearing and swap processing; (2) margining (and segregation) for uncleared swaps; (3) trade execution; (4) trade confirmation; (5) swap trading relationship documentation; (6) real-time public reporting; (7) portfolio reconciliation and compression; (8) daily trading records; and (9) external business conduct standards (collectively, the foregoing requirements are referred to herein as ''Transaction-Level Requirements''). Broadly speaking, the Transaction-Level Requirements closely relate to the financial protection of SDs, MSPs and their counterparties, pre- and post-trade transparency, and other market-oriented regulatory safeguards.

i. Clearing and Swap Processing

Section 2(h)(1) of the CEA requires a swap to be submitted for clearing to a DCO if the Commission has determined that the swap is required to be cleared, unless one of the parties to the swap is eligible for an exception from the clearing requirement and elects not to clear the swap.[48] Closely interlocked with the clearing requirement are the following swap processing requirements: (1) The recently finalized § 23.506, which requires SDs and MSPs to submit swaps promptly for clearing; and (2) § 23.610, which establishes certain standards for swap processing by SDs and MSPs that are clearing members of a DCO.[49]

ii. Margin (and Segregation) Requirements for Uncleared Swaps

Section 4s(e) of the CEA requires the Commission to set margin requirements for SDs and MSPs that trade in swaps that are not cleared.[50] In addition, with

[35] 7 U.S.C. 6s(j).

[36] 17 CFR 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, and 23.607; ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,'' 77 FR 20128, Apr. 3, 2012 (relating to risk management program, monitoring of position limits, business continuity and disaster recovery, conflicts of interest policies and procedures, general information availability, and antitrust considerations, respectively).

[37] 17 CFR 23.609, ''Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management,'' 77 FR 21278 (Apr. 9, 2012). In the same release, the Commission also adopted § 23.608, which prohibits SDs providing clearing services to customers from entering into agreements that would: (1) Disclose the identity of a customer's original executing counterparty; (2) limit the number of counterparties a customer may trade with; (3) impose counterparty-based position limits; (4) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (5) prevent compliance with specified time frames for acceptance of trades into clearing.

[38] 7 U.S.C. 6s(f)(1)(B).

[39] 7 U.S.C. 6s(g)(1).

[40] 17 CFR. 23.201and 23.203; ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,'' 77 FR 20128, Apr. 3, 2012. These requirements also require an SD to provide the Commission with regular updates concerning its financial status, as well as information concerning internal corporate procedures.

[41] 17 CFR 46.1 *et seq.;* ''Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps,'' 76 FR 22833, Apr. 25, 2011.

[42] 7 U.S.C. 2(a)(13)(G).

[43] 7 U.S.C. 24a.

[44] 7 U.S.C. 6t.

[45] 7 U.S.C. 6a.

[46] ''Large Trader Reporting for Physical Commodity Swaps,'' 76 FR 43851, July 22, 2011.

[47] *See* 76 FR 43851, 43852.

[48] 7 U.S.C. 2(h)(1), (7).

[49] 17 CFR 23.506, 23.610 and ''Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management,'' 77 FR 21278, Apr. 9, 2012.

[50] *See* 7 U.S.C. 6s(e). *See also* ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,'' 76 FR 23732, 23733–40, Apr. 28, 2011. Section 4s(e) explicitly requires the adoption of rules establishing margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet the margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with the Commission's margin regulations. In contrast, the segregation requirements in section 4s(1) do not use a bifurcated approach—that is, all SDs and MSPs are subject to the Commission's rule regarding notice and third party custodians for margin collected for uncleared swaps.

respect to swaps that are not submitted for clearing, section 4s(l) requires that an SD or MSP notify the counterparty of its right to require segregation of funds provided as margin, and upon such request, to segregate the funds with a third-party custodian for the benefit of the counterparty.

iii. Trade Execution Requirement

Integrally linked to the clearing requirement is the trade execution requirement, which is intended to bring the trading of mandatorily cleared swaps onto regulated exchanges. Specifically, section 2(h)(8) of the CEA provides that unless a clearing exception applies and is elected, a swap that is subject to a clearing requirement must be traded on a designated contract market (''DCM'') or swap execution facility (''SEF''), unless no DCM or SEF makes the swap available to trade.[51]

iv. Swap Trading Relationship Documentation

CEA Section 4s(i) requires each SD and MSP to conform to Commission standards for the timely and accurate confirmation, processing, netting, documentation and valuation of swaps. Pursuant thereto, the Commission has proposed § 23.504(a), which would require SDs and MSPs to ''establish, maintain and enforce written policies and procedures'' to ensure that the SD or MSP executes written swap trading relationship documentation.[52] Under proposed §§ 23.505(b)(1), 23.504(b)(3), and 23.504(b)(4), the swap trading relationship documentation must include, among other things: all terms governing the trading relationship between the SD or MSP and its counterparty; credit support arrangements; investment and rehypothecation terms for assets used as margin for uncleared swaps; and custodial arrangements.[53] Further, the swap trading relationship documentation requirement applies to all swaps with registered SDs and MSPs.

v. Portfolio Reconciliation and Compression

CEA section 4s(i) directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by SDs and MSPs. Pursuant to CEA section 4s(i), the Commission proposed regulations §§ 23.502 and 23.503, which would require SDs and MSPs to perform portfolio reconciliation and compression, respectively, for all swaps.[54] Proposed § 23.503(c) would require all SDs and MSPs to participate in bilateral compression exercises and/or multilateral portfolio compression exercises conducted by their self-regulatory organizations or DCOs of which they are members.[55] Further, participation in multilateral portfolio compression exercises is mandatory for dealer-to-dealer trades.

vi. Real-Time Public Reporting

Section 2(a)(13) of the CEA directs the Commission to promulgate rules providing for the public availability of swap transaction data on a real-time basis.[56] In accordance with this mandate, the Commission promulgated part 43 rules on December 20, 2011, which provide that all ''publicly reportable swap transactions'' must be reported and publicly disseminated.[57]

vii. Trade Confirmation

Section 4s(i) of the CEA [58] requires that each SD and MSP must comply with the Commission's regulations prescribing timely and accurate confirmation of swaps. The Commission has proposed § 23.501, which requires, among other things, a timely and accurate confirmation of all swaps and life cycle events for existing swaps.[59]

viii. Daily Trading Records

Pursuant to CEA section 4s(g)(1), the Commission adopted § 23.202, which requires SDs and MSPs to maintain daily trading records, including records of trade information related to pre-execution, execution, and post-execution data that is needed to conduct a comprehensive and accurate trade reconstruction for each swap. The final rule also requires that records be kept of cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the SD or MSP.[60]

ix. External Business Conduct Standards

Pursuant to CEA section 4s(h), the Commission has adopted external business conduct rules, which establish business conduct standards governing the conduct of SDs and MSPs in dealing with their counterparties in entering into swaps.[61]

VI. Request for Comment

The Commission requests comment on all aspects of this proposed exemptive order.

VII. Related Matters

A. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (''PRA'') [62] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. 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. Part of this proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is required to submit this proposal to the Office of Management and Budget (''OMB'') for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Under this proposal, certain registrants claiming relief from the specified Entity-Level Requirements and Transaction-Level Requirements would be required to satisfy certain conditions that have PRA implications. The Commission will, by separate action, publish in the **Federal Register** a notice and request for comments on the paperwork burden associated with this exemptive order in accordance with 5 CFR 1320.8. If approved, this new collection of information will be mandatory.

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[51] *See* 7 U.S.C. 2(h)(8).

[52] *See* ''Swap Trading Relationship documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715,'' Feb. 8, 2011.

[53] The requirements under section 4s(i) relating to trade confirmations is a Transaction-Level Requirement. Accordingly, proposed § 23.504(b)(2), which requires an SD's and MSP's swap trading relationship documentation to include all confirmations of swaps, will apply on a transaction-by-transaction basis.

[54] *See* ''Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants,'' 75 FR 81519, Dec. 28, 2010.

[55] *See* 17 CFR 23.503(c), 75 FR 81519, Dec. 28, 2010.

[56] *See* 7 U.S.C. 2(a)(13). *See also* ''Real-Time Public Reporting of Swap Transaction Data,'' 77 FR 1182, 1183, Jan. 9, 2012.

[57] Part 43 defines a ''publicly reportable swap transaction'' as (1) any swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (2) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, Jan. 9, 2012.

[58] 7 U.S.C. 6s(i).

[59] *See* 17 CFR 23.501; ''Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants,'' 75 FR 81519, Dec. 28, 2010.

[60] *See* ''Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,'' 77 FR 20128, Apr. 3, 2012.

[61] *See* 7 U.S.C. 6s(h). *See also* 77 FR 9734, 9822–29.

[62] 44 U.S.C. 3501 *et seq.*

B. Consideration of Costs and Benefits

Section 15(a) of the CEA [63] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its own discretionary determinations with respect to the section 15(a) factors.

Summary of the Proposed Exemption

As discussed above, for a non-U.S. SD or non-U.S. MSP (or U.S. applicant relating to transaction-level requirements in the case of a branch of a U.S. SD) that has submitted a compliance plan describing how it will come into compliance with the swap requirements of the CEA as they become effective, the proposed exemptive order would delay the compliance date for certain Entity-Level Requirements and, to a more limited extent, Transaction-Level Requirements. An important exception to the foregoing is compliance with the CEA requirement regarding SDR reporting and the Large Trader Reporting requirement. For those requirements, non-U.S. SDs and non-U.S. MSPs must comply without delay with respect to transactions with U.S. counterparties.

With respect to transactions with a U.S. counterparty, non-U.S. registrants would be required to comply with all Transaction-Level Requirements that are in effect. With respect to transactions with a non-U.S. counterparty, the non-U.S. SD or non-U.S. MSP, as well as foreign branches of U.S. SDs and U.S. MSPs, need only comply with such regulations as may be required by the home jurisdiction of such non-U.S. registrant (or in the case of a branch, the foreign location of the branch). U.S. SDs and U.S. MSPs would be permitted to delay compliance with Entity-Level Requirements, except the swap data recordkeeping, SDR reporting and Large Trader Reporting requirements.

Costs

As discussed above, the proposed order is exemptive in that it would provide eligible persons with relief in the form of additional time with which to comply with certain regulatory requirements. As with any exemptive order, the proposed order is permissive—eligible persons are not required to avail themselves of the exemptive relief provided. Accordingly, the Commission assumes that an entity will rely on the proposed exemption only if the anticipated benefits warrant the costs attendant to the condition that requires the filing of a compliance plan. Although there is significant uncertainty in the number of swap entities that will seek to register as SDs and MSPs, as well as the number of swap entities that will submit a compliance plan in order to obtain exemptive relief, the Commission believes it is reasonable to estimate that between 40 and 80 non-U.S. SDs and MSPs will submit compliance plans.[64] The average cost of preparing and submitting the required compliance plan for such non-U.S. SDs and MSPs initially is estimated to be approximately $31,190 per registrant, or a total aggregate cost of between $1,247,600 (assuming that 40 SDs and MSPs submit a compliance plan) and $2,495,200 (assuming that 80 SDs and MSPs submit a compliance plan). This estimate is based on the hourly cost of personnel that are capable of evaluating both Commission and home country regulations in light of the non-U.S. persons' operations.[65] Further, the condition that requires the filing of a compliance plan is not static—that is, the condition requires that the non-U.S. person submit, if necessary, a revised plan to account for any material changes since the filing of the initial plan. The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan.

In addition, the Commission estimates that an additional 20 to 45 U.S. SDs or U.S. MSPs whose foreign branch seeks to rely on the exemptive relief with respect to swaps with non-U.S. counterparties will submit a compliance plan. In this case, the compliance plan must only address how the registrant plans to comply, in good faith, with all applicable Transaction-Level Requirements under the CEA upon the expiration of this proposed exemptive order. The average cost of preparing and submitting the required compliance plan for such non-U.S. SDs and MSPs initially is estimated to be approximately $18,714 per U.S. registrant, or a total aggregate cost of between $374,280 (assuming that 20 U.S. SDs and MSPs submit a compliance plan) and $842,130 (assuming that 45 SDs and MSPs submit a compliance plan). This estimate is based on the hourly cost of personnel that are capable of evaluating both Commission and home country regulations in light of the U.S. persons' foreign branch operations.[66] Further, the condition that requires the filing of a compliance plan by a U.S. person is not static—that is, the condition requires that the U.S. person submit, if necessary, a revised plan to account for any material changes since the filing of the initial plan. The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan.

Apart from the direct costs discussed above, the Commission proposes that the exemptive order may result in indirect costs to the public, including the costs of delayed compliance with the Entity-Level Requirements and, to a more limited extent, Transaction-Level Requirements of the Dodd-Frank Act. The Commission proposes that these costs are not, however, susceptible to

[63] 7 U.S.C. 19(a).

[64] The Commission currently estimates that approximately 125 entities will be covered by the definitions of the terms ''swap dealer'' and ''major swap participant.'' *See* ''Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant' ''; Final Rule, 77 FR 30596, 30713, May 23, 2012. However, not all of these entities are eligible for or will seek exemptive relief.

[65] Although different registrants may choose to staff preparation of the compliance plan with different personnel, Commission staff estimates that, on average, an initial compliance plan could be prepared and submitted with 70 hours of attorney time, as follows: 10 hours for a senior attorney at $830/hour, 30 hours for a mid-level attorney at $418/hour, and 30 hours for a junior attorney at $345/hour. To estimate the hourly cost of senior and junior-level attorney time, Commission staff consulted with a law firm that has substantial expertise in advising clients on similar regulations. For the hourly cost of the mid-level attorney, Commission staff reviewed data contained in Securities Industry and Financial Markets Association (''SIFMA''), Report on Management and Professional Earnings in the Securities Industry, Oct. 2011, for New York, and adjusted by a factor for overhead and other benefits, which the Commission has estimated to be 1.3.

[66] Although different registrants may choose to staff preparation of the compliance plan with different personnel, Commission staff estimates that, on average, an initial compliance plan could be prepared and submitted with 42 hours of attorney time, as follows: 6 hours for a senior attorney at $830/hour, 18 hours for a mid-level attorney at $418/hour, and 18 hours for a junior attorney at $345/hour. To estimate the hourly cost of senior and junior-level attorney time, Commission staff consulted with a law firm that has substantial expertise in advising clients on similar regulations. For the hourly cost of the mid-level attorney, Commission staff reviewed data contained in Securities Industry and Financial Markets Association (''SIFMA''), Report on Management and Professional Earnings in the Securities Industry, Oct. 2011, for New York, and adjusted by a factor for overhead and other benefits, which the Commission has estimated to be 1.3.

meaningful quantification due to a lack of data regarding several key variables, including the probability of a significant market disturbance, the impact of that disturbance on the U.S. public and U.S. entities, and the role of entities subject to the order in creating or propagating such a disturbance. Nevertheless, the Commission seeks comment on any such indirect costs, including empirical data from which to quantify the same.

Benefits

The proposed exemptive order provides a benefit in that it would allow affected entities additional time to transition into the new regulatory regime in a more orderly manner, which promotes stability in the markets as that transition occurs. This, in turn, promotes the integrity and efficiency of the swap markets during the transition period. The phased-in process would eliminate the need for affected persons to file individual applications for exemptive relief and/or no-action relief, and reduces compliance costs related to the exempted transactions that occur during the transition period. Another benefit will be increased international harmonization because the proposed relief provides U.S. and non-U.S. registrants the latitude necessary to develop and modify their compliance plans as the regulatory structure in their home jurisdiction changes, which would promote greater regulatory consistency and coordination with international regulators.

The primary benefit of the proposed compliance plan condition is that it ensures that non-U.S. persons claiming the exemption would be actively and demonstrably considering and planning for compliance with the Entity-Level and Transaction-Level Requirements under the CEA, as may be applicable. Absent such a condition and the requirement, a non-U.S. person could simply claim the exemption, without making a good-faith effort to comply with the Dodd-Frank Act. Further, the requirement that the plan be updated to reflect any material change in the information initially submitted ensures that the planning for compliance is performed in a thoughtful and continuous manner. Finally, the compliance plan also would assist NFA and Commission staff in preparing for the registration of non-U.S. SDs and non-U.S. MSPs as they develop familiarity with the regulatory regimes of foreign jurisdictions.

In addition, the relief would allow foreign branches of U.S. SDs and MSPs to comply only with those requirements as may be required in the jurisdiction where the foreign branch is located for swaps with non-U.S. counterparties, effective concurrently with the date upon which such SDs and MSPs must first apply for registration until 12 months following the publication of the proposed order in the **Federal Register**. In addition, U.S. SDs and U.S. MSPs may delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder) from the date upon which SDs and MSPs must apply for registration until January 1, 2013.

The Commission requests comments on all aspects of the consideration of costs and benefits of the proposed exemptive order discussed in this Notice and any alternatives to the same. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

Section 15(a) Factors

Protection of Market Participants and the Public

The Commission expects that the exemptive relief provided in this proposed order would protect market participants and the public by facilitating a more orderly transition to the new regulatory regime than might otherwise occur in the absence of this proposed order. In particular, non-U.S. persons would be afforded additional time to come into compliance than would otherwise be the case, which contributes to greater stability and reliability of the swap markets during the transition process.

As discussed above, to the extent that non-U.S. persons submit a plan for compliance regarding Entity-Level and Transaction-Level Requirements, such persons would experience savings during the interim period. Reduced costs may occur as the result of delaying decisions about new systems, operational patterns, legal agreements, or other business arrangements until such time as a non-U.S. person knows what its obligations will be with respect to the cross-border application of Title VII of the Dodd-Frank Act, as well as by reducing the period of time during which ongoing costs associated with Entity-Level Requirements are borne by that entity.

As discussed above, non-U.S. SDs and non-U.S. MSPs taking advantage of this exemption would have to file a compliance plan with NFA and, if necessary, update the same. The costs of the compliance plan are discussed above.

Efficiency, Competitiveness, and Financial Integrity of the Markets

The proposed order would promote efficiency by providing additional time in which eligible persons may implement compliance controls and new technologies, and adjust operational patterns and legal agreements, if necessary. This additional time would minimize the risk that certain entities would withdraw from the market in order to avoid taking steps necessary for compliance.

Price Discovery

The Commission has not identified any costs or benefits of the proposed order with respect to price discovery.

Risk Management

Entity level risk-management and capital requirements could be delayed by operation of the exemptive order, which could weaken risk management. However, such potential risk is limited by the fact that the proposed exemptive order is finite in the additional time it provides eligible persons.

Other Public Interest Considerations

The Commission has not identified any other public interest costs or benefits of the proposed order.

VIII. Proposed Order

The Commission, in order to provide for an orderly implementation of Title VII of the Dodd-Frank Act, and consistent with the determinations set forth above, which are incorporated in the Final Order by reference, hereby grants, pursuant to section 4(c) of the CEA, temporary relief to non-U.S. swap dealers (''SDs'') and non-U.S. major swaps participants (''MSPs''), and to U.S. SDs and U.S. MSPs, including their foreign branches, from certain swap provisions of the CEA, subject to the terms and conditions below.[67]

(1) *Non-U.S. Person:* A non-U.S. person may delay compliance with respect to Entity-Level Requirements (subject to the condition in paragraph (2) below); provided, however, that: (A) such person shall file with National Futures Association (''NFA'') an application to register as an SD or MSP, as applicable, pursuant to Commission Regulation part 3 by the date for which such person must apply for registration; (B) within 60 days of filing its application for registration, such person shall file with NFA a compliance plan addressing how it plans to comply, in

[67] As used in this order, the terms ''U.S. person,'' ''Entity-Level Requirements,'' and ''Transaction-Level Requirements'' have the same meanings as provided in the Cross-Border Interpretive Guidance.

good faith, with the applicable Entity-Level and Transaction-Level Requirements under the CEA. At a minimum, such plan would provide, for each Entity-Level Requirement and Transaction-Level Requirement, a description of: (i) whether such person would comply with the Entity-Level and Transaction-Level requirements that are in effect or whether they would seek a comparability determination and rely on compliance with one or more of the requirements of the home jurisdiction; and (ii) to the extent that such person would comply with one or more of the requirement(s) of the home jurisdiction, a description of such requirement(s). Such persons may modify or alter the compliance plans as appropriate, provided that they submit any such amended plan to NFA.

(2) Notwithstanding paragraph (1), non-U.S. SDs and non-U.S. MSPs shall be required to comply with the SDR reporting and Large Trader Reporting requirements for all swaps with U.S. counterparties, upon its compliance date. However, during the pendency of this Order, non-U.S. SDs and non-U.S. MSPs that are not affiliates or subsidiaries of a U.S. SD may delay compliance with the SDR reporting and Large Trader Reporting requirements for swaps with non-U.S. counterparties.

(3) With respect to Transaction-Level Requirements as applied to transactions with a non-U.S. counterparty, non-U.S. SDs and non-U.S. MSPs may comply with such regulations only as may be required by the home jurisdiction of such registrants; provided, however, that such registrants shall comply with such requirements that are in effect for all swaps with U.S. counterparties.

(4) The relief provided to non-U.S. SDs and non-U.S. MSPs in this order shall be effective concurrently with the date upon which SDs and MSPs must first apply for registration and expire 12 months following the publication of the proposed order in the **Federal Register**.

(5) *U.S Person:* A U.S. person shall apply to register as an SD or MSP by the date such registration is required and shall comply with all applicable Entity-Level and Transaction-Level Requirements that are in effect, except as provided: (A) such person may delay compliance with the Entity-Level Requirements until January 1, 2013, except with respect to swap data recordkeeping, SDR reporting, and Large Trader Reporting requirements. Nevertheless, with respect to Transaction-Level Requirements as applied to swaps with a non-U.S. counterparty, a foreign branch of a U.S. SD or U.S. MSP may comply with those requirements only as may be required by the foreign location of such branches.

(6) A U.S. SD or U.S. MSP whose foreign branch seeks to rely on the exemptive relief with respect to swaps with non-U.S. counterparties must submit a compliance plan (as described in paragraph (1) herein) addressing how it plans to comply, in good faith, with all applicable Transaction-Level Requirements under the CEA upon the expiration of this proposed exemptive order.

(7) *Scope of Relief:* The temporary relief provided in this Order: (A) shall not affect, with respect to any swap within the scope of this Order, the applicability of any other CEA provision or Commission regulation (*i.e.,* those outside the Entity-Level and Transaction-Level Requirements); (B) shall not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided in this Order; (C) shall not affect the applicability of any provision of the CEA or Commission regulation to futures contracts, or options on future contracts; and (D) shall not affect any effective or compliance date set out in any specific Dodd-Frank Act rulemaking by the Commission.

Finally, the Commission may, in its discretion, condition, suspend, terminate, or otherwise modify this Order, as appropriate, on its own motion.

Issued in Washington, DC, on June 29, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Exemptive Order Regarding Compliance With Certain Swap Regulations—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the exemptive order regarding the effective dates of certain Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provisions.

Today's exemptive order makes five changes to the exemptive order issued on December 19, 2011.

First, the proposed exemptive order extends the sunset date from July 16, 2012, to December 31, 2012.

Second, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have now completed the rule further defining the term ''swap dealer'' and ''securities-based swap dealer.'' Thus, the exemptive order no longer provides relief as it once did until those terms were further defined.

The Commissions are also mandated by the Dodd-Frank Act to further define the term ''swap'' and ''securities-based swap.'' The staffs are making great progress, and I anticipate the Commissions will take up this final definitions rule in the near term. Until that rule is finalized, the exemptive order appropriately provides relief from the effective dates of certain Dodd-Frank provisions.

Third, in advance of the completion of the definitions rule, market participants requested clarity regarding transacting in agricultural swaps. The exemptive order allows agricultural swaps cleared through a derivatives clearing organization or traded on a designated contract market to be transacted and cleared as any other swap. This is consistent with the agricultural swaps rule the Commission already finalized, which allows farmers, ranchers, packers, processors and other end-users to manage their risk.

Fourth, unregistered trading facilities that offer swaps for trading were required under Dodd-Frank to register as swap execution facilities (SEFs) or designated contract markets (DCM) by July of this year. These facilities include exempt boards of trade, exempt commercial markets and markets excluded from regulation under section 2(d)(2). Given the Commission has yet to finalize rules on SEFs, this order gives these platforms additional time for such a transition.

Fifth, the Commission is providing guidance regarding enforcement of rules that require that certain off-exchange swap transactions only be entered into by eligible contract participants (ECPs). The guidance provides that if a person takes reasonable steps to verify that its counterparty is an ECP, but the counterparty turns out not to be an ECP based on subsequent Commission guidance, absent other material factors, the CFTC will not bring an enforcement action against the person.

Phased Compliance

I support the proposed release on phased compliance for foreign swap dealers. The release provides phased compliance for foreign swap dealers (including overseas affiliates of U.S. swap dealers) of certain requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Such phased compliance would enable market participants to comply with the Dodd-Frank Act in an orderly fashion. It would allow time for the CFTC to receive public comment on interpretive guidance on the cross-border application of the Dodd-Frank Act.

Under the interpretive guidance, in certain circumstances, market participants may

comply with certain Dodd-Frank requirements by complying with comparable and comprehensive foreign regulatory requirements, or what we call ''substituted compliance.'' The release on phased compliance also allows time for the CFTC, foreign regulators and market participants to continue to consult and coordinate on regulation of cross-border swaps activity, as well as the appropriate implementation of substituted compliance.

In this period, foreign swap dealers must file a plan demonstrating how they will eventually comply with Dodd-Frank, which in certain circumstances could be through substituted compliance.

The release provides for phased compliance in the following manner:

- Foreign swap dealers would be required to register with the CFTC upon the compliance date of the registration requirement;
- U.S. and foreign swap dealers must comply with transaction-level requirements with U.S. persons, including branches of U.S. persons;
- For transaction-level requirements, foreign swap dealers, as well as overseas branches of U.S. swap dealers, transacting with non-U.S. persons is phased for one year.
- Entity-level requirements (other than reporting to SDRs and large trader reporting) that might come under substituted compliance is phased for one year; and
- For foreign swap dealers, swaps with U.S. persons, including branches of U.S. persons, would be required to be reported to a SDR or the CFTC.

In addition, U.S. swap dealers' compliance with certain internal business conduct requirements is phased until January 1, 2013.

The release addresses comments from U.S. and international market participants, and I look forward to additional input on the proposal.

[FR Doc. 2012–16498 Filed 7–11–12; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 210

Rules of General Application, Adjudication, and Enforcement

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (''Commission'') proposes to amend its Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on September 10, 2012.

ADDRESSES: You may submit comments, identified by docket number MISC–040, by any of the following methods:

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

—Agency Web Site: *http://www.usitc.gov.* Follow the instructions for submitting comments on the Web site at *http://www.usitc.gov/secretary/edis.htm.*

—Email: *james.worth@usitc.gov.* Include docket number MISC–040 in the subject line of the message.

—Mail: For paper submission. U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

—Hand Delivery/Courier: U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC–040), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *http://www.usitc.gov,* including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Lisa R. Barton, Acting Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to *http://www.usitc.gov* and/or the U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: James Worth, telephone 202–205–3065, Office of the General Counsel, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, a section-by-section explanation of the proposed amendments to parts 201 and 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment on whether the language of the proposed amendments is sufficiently clear for users to understand, in addition to any other comments they wish to make on the proposed amendments.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the applicable requirements of the Administrative Procedure Act (''APA'') (5 U.S.C. 553), and will be codified in 19 CFR Parts 201 and 210.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (''section 337'') in order to increase the efficiency of its section 337 investigations.

This rulemaking was undertaken to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

On February 14, 2012, at 77 FR 8114, the Commission published a Plan for Retrospective Analysis of Existing Rules. This plan was issued in response to Executive Order 13579 of July 11, 2011, and established a process under which the Commission will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. During the two years following the publication of the plan, the Commission expects to

review a number of aspects of its rules. This includes a general review of existing regulations in 19 CFR Parts 201, 207, and 210. The current notice of proposed rulemaking is consistent with the plan to ensure that the Commission's rules are effective, although it should be noted that many of the amendments proposed in this notice have been under consideration since before the plan was established.

The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the applicable requirements of section 553 of the APA. This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in expenditure in the aggregate by State, local, and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Part 201

Subpart B—Initiation and Conduct of Investigations

Section 201.16(a)

Section 201.16(a) generally provides means to serve documents on parties. Section 201.16(b)(3) indicates that ''When service is by mail, it is complete upon mailing of the document'' for service by the parties. To eliminate confusion, the proposed rule would indicate that this is equally applicable to service by the Commission. Further, the proposed rule would clarify that overnight delivery is an option for service by the Commission. In this connection, the proposed rule would indicate that when service is by overnight delivery, it is complete upon placing/submitting the document in overnight delivery.

Section 201.16(c)

Section 201.16(c) generally provides for a certificate of service. The Commission proposes to amend § 201.16(c) to refer to other applicable requirements for service in § 210.4(i), in addition to the current reference to § 201.8.

Section 201.16(e)

Section 201.16(e) generally provides for additional days to be added to the response times when service is by overnight delivery. For example, § 201.16(e) provides ten additional days when service is by mail to a foreign country, but only provides one day for overnight delivery service regardless of when delivery occurs. The reality of overnight delivery service is that it often takes more than one day to reach certain foreign countries. The proposed rule would add five additional calendar days to the response time when overnight delivery service is to a foreign country.

Section 201.16(f)

Section 201.16(f) generally provides for electronic service of documents in matters before the Commission with the appropriate prior consent. Section 201.16(e) provides additional time to be added to the response times when service is by mail or overnight mail. The proposed rule would clarify that no additional time is added to the response times when service is by electronic means. The Commission expects the parties or the judges to establish a time of day by which email will be sent.

Part 210

Subpart A—Rules of General Applicability

Section 210.3

Section 210.3 provides definitions for certain terms used in Part 210. The proposed rule would supply ''ancillary proceeding'' as a synonym for the term ''related proceeding,'' using the same definition.

Section 210.4

Section 210.4 generally provides the requirements for written submissions. Section 210.4(f)(3) sets forth a list of submissions which must be filed electronically, with true paper copies filed by noon on the next business day. The proposed rule would amend § 210.4(f)(3) by adding filings under §§ 210.38, 210.66, and 210.70 to this list.

Section 210.5

Section 210.5 generally provides for special treatment of confidential business information in section 337 investigations. Where the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the time to issuance of the public version may vary. The Commission proposes to provide that the Commission (or the presiding administrative law judge, if the administrative law judge has issued the document) will issue the public version of the document within 30 days of issuance of the confidential version, unless good cause exists for extending this deadline. The administrative law judge or the Commission may extend this time by order.

Section 210.6

Section 210.6 generally provides for the computation of time in section 337 investigations, and supplements §§ 201.14 and 201.16, which provide the

general rules for computation of time in proceedings before the Commission. The current rule mistakenly refers to §§ 210.14 and 210.16. The proposed rule revises § 210.6 to refer to the appropriate subsections of §§ 201.14 and 201.16. Further, the proposed rule would amend § 210.6(c) to refer to the proposed rule for § 201.16(e) to provide that the response time is enlarged by a total of 5 calendar days when service is by overnight delivery to a foreign country. In addition, the proposed rule would remove § 210.6(d) which is redundant in light of § 201.16(e).

Section 210.7

Section 210.7 generally provides for service of process and publication of notices. The current rule mistakenly refers to § 210.6 rather than § 201.6, the rule on confidential business information. The proposed rule revises § 210.7 to refer to § 201.6 instead of § 210.6. In addition, the proposed rule puts ''§ 201.6'' closer in the sentence to ''confidential business information'' to clarify that confidential business information is defined in § 201.6. Further, the proposed rule provides for overnight service of cease and desist orders.

The current rule also mistakenly refers to § 210.7(b)(2) and (b)(1), which do not exist. The proposed rule refers instead to § 210.7(c)(2) and (c)(1), and to § 201.10 which provide for publication of notices.

Section 210.8

Section 210.8 generally provides for the filing of the complaint and for filings by the complainant, respondents, and members of the public on the public interest issues raised by the complaint. The Commission proposes to provide that if a complainant, proposed respondent, or member of the public files a confidential submission, it shall file a public version of the submission at the same time.

Subpart C—Pleadings

Section 210.12(a)

Section 210.12(a) generally provides the requirements for the contents of a complaint and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. The Commission proposes to eliminate reference to § 201.8.

19 U.S.C. 1337(a)(1)(B)–(E) prohibit the importation, sale for importation, or sale after importation of articles covered by a valid and enforceable patent, copyright, trademark, mask work, or boat hull design related to an industry that exists or is in the process of being established within the meaning of 19 U.S.C. 1337(a)(2)–(3). 19 U.S.C. 1337(a)(1)(A)(i)–(ii) prohibit unfair methods of competition, or unfair acts in the importation or sale of articles in the United States, the effect of which is to destroy or substantially injure an industry in the United States or prevent the establishment of such an industry. The Commission proposes to amend paragraphs (a)(6)(i) and (ii) to require the complainant to plead with particularity whether it alleges a domestic industry that exists or a domestic industry that is in the process of being established. The amendment is in keeping with the Commission's fact pleading requirements and serves to provide the Commission and the public with notice of the manner in which the complainant believes it satisfies the requirements of section 337.

In addition, the Commission proposes to amend paragraph (11) to require the complainant to specify if it is requesting a general exclusion order, a limited exclusion order, and/or cease and desist orders under 19 U.S.C. 1337(d), (f), or (g). The Commission believes that this amendment serves a public notice function. The requested relief will be stated in the notice requesting public interest comments to facilitate public comment specific to the requested relief, and in the notice of investigation for public notice purposes. *See* 75 FR 60671 (Oct. 1, 2010); 76 FR 64803 (Oct. 19, 2011).

The Commission further proposes to add a paragraph (12) to require the complainant to identify the accused products with a clear statement in plain English in order to put the public on notice of the type of products involved. For example, the caption of the investigation might refer to ''certain electronic devices,'' but the complaint would provide a further statement to identify the type of products involved in plain English as mobile devices, tablets, or computers. The description of the accused product will be included in the **Federal Register** notice requesting public interest comments as well as the notice of investigation.

Section 210.13(b)

Section 210.13(b) generally sets forth the requirements for the contents of the response to the complaint, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. The proposed rule would eliminate any reference to § 201.8.

Section 210.14

Section 210.14 generally provides for amendments to the pleadings and notice of investigation. The Commission proposes to make uniform and codify its practice concerning consolidating related investigations. The proposed rule would add a new paragraph (f) to provide that the Commission may consolidate investigations, that the presiding administrative law judge may consolidate the investigations if both investigations are before the same administrative law judge, and the chief administrative law judge may consolidate investigations if the investigations are before different administrative law judges and both administrative law judges agree that consolidation is appropriate. The caption and investigation number of the consolidated investigation would be a combination of the caption and numbers of the investigations being combined. The investigation number of the lead investigation would be the first investigation number named in the consolidated caption. For example, Investigation Nos. 337–TA–xxxx and 337–TA–yyyy would be combined as 337–TA–xxxx/yyyy where xxxx is the lead investigation. The heading of § 210.14 would be amended to include consolidation of investigations.

The Commission further proposes to address the filing of substantial amendments to complaints during the pre-institution review period, a practice which has become increasingly common. Many of these amendments have attempted to significantly change the scope of the requested investigation either by naming additional proposed respondents or asserting infringement of additional patents or patent claims. Substantial amendments to complaints during the pre-institution review period complicate the Commission's ability to solicit and obtain comments concerning the public interest implications of the complaint in a timely manner, place additional demands on Commission resources to assess the amendments and/or process extensions before the conclusion of the original institution period, and can effectively reduce the 30-day period that proposed respondents normally have to review the allegations against them. The proposed rule change, which would add a new sentence at the end of rule 210.14(a), would alleviate these concerns by providing that if a complainant significantly amends a complaint prior to institution, the amendment will restart the normal 30-day process for determining whether to institute the investigation.

Sections 210.14(b)(1) and 210.15(a)(2)

Section 210.14(b)(1) provides for motions to amend the complaint after an investigation has been instituted. Section 210.15 sets forth the general requirements for a motion, and § 210.15(a)(2) contains the more specific requirement that a motion to amend the complaint and notice of investigation to add proposed respondents must be served on each proposed respondent. The proposed rule would move the requirement for service on proposed respondents from § 210.15(a)(2) to § 210.14(b)(1).

Subpart D—Motions

Section 210.16(b)

Section 210.16 generally provides for default in section 337 proceedings. Section 210.16(b)(1) provides a two-step process for finding a respondent in default where the respondent has failed to appear. First, the complainant may move for an order to show cause why the respondent should not be found in default (or the administrative law judge may issue an order to show cause *sua sponte*). Second, if the respondent fails to make the necessary showing, the administrative law judge may issue an order finding the respondent in default. In certain recent investigations, the complainant has failed to observe the two-part process outlined in § 210.16(b), and has erroneously made a motion for a finding of default, skipping the motion for an order to show cause. In order to clarify the process, the Commission proposes to separate § 210.16(b)(1) into two parts, § 210.16(b)(1)(i) and § 210.16(b)(1)(ii), directed to the show cause step and the default step, respectively.

Section 210.16(c)

Section 210.16(c) generally provides the means of relief against a respondent in default. Where the complainant seeks a general exclusion order, § 210.16(c)(2) requires the complainant to put notice in the motion for default or termination of the last remaining respondent that it is seeking a general exclusion order. In certain recent investigations, the complainant has failed to state at the time of requesting relief against the last remaining respondent that it was seeking a general exclusion order. In order to highlight this requirement, the Commission proposes to add headings to indicate that § 210.16(c)(1) is directed to the type of relief available and § 210.16(c)(2) is directed to general exclusion orders. The Commission further proposes to set forth the statutory requirements for a general exclusion order in a statutory default case in § 210.16(c)(2).

Section 210.17

Section 210.17 generally addresses failures to act other than failure to appear to answer the complaint and notice of investigation pursuant to § 210.16 and 19 U.S.C. 1337(g)(1)(C). Section 210.17 provides that the administrative law judge or the Commission may draw adverse inferences for these other failures to act. The Commission proposes to provide that a respondent who appears but who later wishes to default may subsequently file a notice of its intention to default. This subsequent default will be treated the same as other failures to act in this section, and the administrative law judge or Commission may draw adverse inferences in the same manner. The Commission further proposes to retitle the section ''Other Failure to Act and Default.''

Section 210.21

Section 210.21 generally provides for termination of the investigation prior to a finding of violation of section 337 by withdrawal of the complaint, settlement agreement, or consent order. Section 210.21(b) provides that a motion for termination by reason of a settlement agreement shall contain copies of the settlement agreement, any supplemental agreements, and a statement that there are no other agreements. In certain recent investigations, the complainant has failed to supply the Commission with all the documents referenced in the settlement agreements. In order to clarify this aspect of § 210.21(b), the Commission proposes to add that the parties must provide a copy of any documents referenced in the settlement agreements because these documents are considered part of the settlement agreement.

With respect to § 210.21(c) on termination by consent order, the Commission proposes to clarify § 210.21(c)(3) by providing that consent order stipulations include a statement identifying the asserted intellectual property right or unfair trade practice that is the basis for the alleged violation of Section 337, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles. The Commission proposes to replace the third sentence of paragraph (c)(1)(ii) to indicate that the consent order stipulation must comply with the requirements of paragraph (c)(3). The Commission further proposes to list the terms in a consent order in a new paragraph (c)(4). The Commission clarifies that, although the consent order stipulations may contain additional terms, the proposed consent order itself cannot add terms beyond what is provided for in this section, and that the Commission will not enforce any terms beyond those provided for in § 210.21(c). In addition, the Commission proposes to require that a party moving to terminate an investigation by consent order must submit a copy of any agreements with any other party, i.e., a copy of any settlement or licensing agreements.

Subpart E—Discovery and Compulsory Process

Section 210.28

Section 210.28 generally provides for depositions in section 337 investigations. Federal Rule of Civil Procedure 30(b)(6) provides that in its notice of deposition or subpoena, a party may name as the deponent a public or private corporation, partnership, association, government agency, or other entity and must describe with particularity the matters for examination. The organization must then designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf, and it may set out the matters on which each will testify. There is no Commission rule that requires a party to respond to a notice of deposition, e.g., of a corporate designee, within any particular period of time. This leads to last minute disputes among the parties about the scope of topics upon which the corporate designee will testify. By comparison, other discovery rules, such as § 210.30(b)(2) regarding production of documents and things, § 210.29(b)(2) regarding interrogatories, and § 210.32, as well as the ALJ Ground Rules on subpoenas duces tecum, provide for a ten day period for parties to respond and submit objections. In this connection, the Commission proposes to create a ten-day period in which parties may respond to and make objections to a notice of deposition.

In keeping with the Federal Rules of Civil Procedure, the Commission further proposes to place a limit on the number of depositions that the parties may take. Federal Rule of Civil Procedure 30(a)(2)(A)(i) provides that a maximum of 10 depositions may be taken by the plaintiffs, or by the defendants, or by the third-party defendants unless the parties have stipulated otherwise. This is the general rule for civil cases. Because Commission investigations may

involve multiple parties and multiple patent claims, the Commission proposes to limit the number of fact depositions taken. Specifically, the Commission proposes to limit the complainants as a group to a maximum of five fact depositions per respondent or no more than 20 fact depositions, whichever is greater, to limit the respondents as a group to a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, to limit him or her to taking a maximum of 10 fact depositions and he or she is permitted to participate in all depositions taken by any parties in the investigation. The number of depositions may be increased on written motion to the presiding administrative law judge for good cause shown.

Section 210.29

Section 210.29 generally provides for interrogatories in section 337 investigations. In keeping with the ground rules of several of the administrative law judges, the Commission proposes to limit the number of interrogatories. Specifically, each party would be allowed to serve any other party with a maximum of 175 interrogatories, including subparts, absent stipulation by the parties or grant of a written motion by a party to the presiding administrative law judge for good cause shown.

Section 210.34(b) and (c)

Section 210.34(b) generally provides the steps that a person must take if he finds that he has made an unauthorized disclosure of information. The Commission proposes to amend § 210.34(b) to clarify that the rule also encompasses loss or theft of information.

Section 210.34(c) generally provides for sanctions for violation of a protective order. When a determination on sanctions is pending before the Commission, it is currently unclear from the rules whether the Commission may consider only the recommended determination on sanctions from the administrative law judge or also the orders related to the recommended determination on sanctions. The Commission proposes to clarify that the Commission may consider both the recommended determination on sanctions and also any orders related thereto. To comply with the requirements of the Office of the Federal Register, the Commission would move the text of the Note to Paragraph (c) into the body of paragraph (c). The Commission would thus redesignate the text of the Note as paragraphs (c)(1) and (c)(2). The Commission would redesignate the current body of paragraph (c), which has subparagraphs (1)–(5), as paragraph (c)(3) with subparagraphs (i)–(v).

Subpart G—Determinations and Actions Taken

Section 210.42(a) and (c)

Section 210.42 generally provides for initial determinations. Under § 210.51, an administrative law judge may set a target date for completion of an original investigation at 16 months or less by order rather than by initial determination. 73 FR 38,322 (July 7, 2008). The Commission proposes to amend section 210.42(c) to conform to § 210.51. In addition, the Commission proposes to amend section 210.42(a)(1)(i) to conform to the proposed amendment to § 210.51, which divides § 210.51(a) into subparagraphs (a)(1) and (a)(2).

The Commission further proposes to amend section 210.42(c) by dividing it into a paragraph (c)(1) for motions which may be granted by initial determination and a paragraph (c)(2) for motions which may be granted or denied by initial determination. In this connection, the Commission proposes to provide that decisions by an administrative law judge on motions for forfeiture or return of respondents' bond pursuant to section 210.50(d) or for forfeiture or return of complainant's temporary relief bond pursuant to section 210.70 shall be made as an initial determination regardless of whether the motion is granted or denied.

Section 210.43

Section 210.43 generally provides the timing and contents of a petition for review of an initial determination of the administrative law judge to the Commission. Section 210.43(a) provides that petitions for review of initial determinations issued under § 210.42(c) that would terminate the investigation in its entirety on summary determination must be filed within 10 business days after service of the initial determination. The Commission proposes to correct a technical error. In this connection, the proposed rule would provide 10 days (i.e., 10 calendar days) rather than 10 business days. (Under § 201.14, 10 days means 10 calendar days, unless otherwise specified.)

The Commission further proposes to include a reference in § 210.43(a) and (c) to § 210.75(b)(3), in order to provide that petitions for review of enforcement initial determinations in formal enforcement proceedings are due 10 days after the service of the enforcement initial determination, and responses thereto are due 5 business days after the service of the petitions for review. *See* § 210.75, *infra.*

The Commission proposes a further amendment that relates to attempts by parties to evade the page limits for petitions for review and responses thereto. The Commission proposes to add an express statement prohibiting such attempts to evade the page limit through reference to previously filed pleadings. The Commission notes that this does not represent a change in the substance of the rule. As such, the Commission would reiterate that all arguments not contained within the petition for review, or response thereto, are waived. Even considering the fact that investigations often include multiple patent claims and multiple parties, the Commission considers its 100 page limit to be generous, especially considering that the U.S. Court of Appeals for the Federal Circuit limits opening briefs to 14,000 words or 1,300 lines of monospaced type (approximately 60 pages of 14-point type). Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

Section 210.50

Section 210.50 generally provides for the issuance of a limited exclusion order, a general exclusion order, and/or a cease and desist order, and the posting of a bond by the respondents in the case of the issuance of an exclusion order. Section 210.50(a)(4) provides that the Commission may receive submission from the parties, interested persons, and other government agencies regarding the possible issuance of a remedy. The Commission proposes to require that if a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission at the same time. Section 210.50(a)(4) also provides that the parties are requested to provide information relating to the statutory public interest factors within 30 days of service of the administrative law judge's recommended determination on remedy and bonding. The Commission proposes to clarify that the limit of 5 pages applies only to submissions under this paragraph, in response to the recommended determination, rather than to all submissions under this section.

Section 210.50(d) states that a motion for return or forfeiture of a bond may be made within 90 days of the expiration of the period of Presidential review. The Commission proposes to add that a motion for return or forfeiture of a bond may be made, if an appeal is taken from

the Commission determination, within 30 days of the resolution of the appeal. The Commission further proposes to amend the rule to provide that, if the administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge, rather than to the Commission.

Section 210.51

Section 210.51 generally provides that the administrative law judge shall set a target date for completion of an investigation. The Commission proposes to separate paragraph (a) into paragraph (a)(1) pertaining to original investigations and paragraph (a)(2) pertaining to formal enforcement proceedings. With respect to formal enforcement proceedings, the Commission proposes to provide that an administrative law judge may set a target date of 12 months or less by order, and a target date greater than 12 months for completion of a formal enforcement proceeding by initial determination.

Subpart H—Temporary Relief

Section 210.54

Section 210.54 generally provides for service of information that supplements a complaint and pre-institution motions. The revision which became effective August 6, 2008, 73 FR 38,322 (July 7, 2008), omitted a specific reference to a motion for temporary relief, which would provide antecedent basis to the provision that the ''complainant must serve non-confidential copies of both documents * * *.'' The proposed rule contains an amendment to include a motion for temporary relief in that sentence in order to provide antecedent basis for the phrase ''both documents.''

Section 210.56(a)

Section 210.56(a) generally provides for the notice that is required to accompany service copies of complaints and motions for temporary relief, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

Section 210.58

Section 210.58 generally provides for provisional acceptance of a motion for temporary relief filed with a complaint, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

Section 210.59(b) and (c)

Section 210.59(b) and (c) generally provide for a response to a motion for temporary relief, and reference § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

Section 210.60

Section 210.60 generally provides, with respect to investigations where temporary relief is sought, a designation of a more complicated temporary relief phase of the investigation. The Commission proposes to add a definition of ''more complicated,'' formerly codified at § 210.22, which had previously been deleted. The designation of ''more complicated'' no longer applies in most section 337 investigations, but may still be applicable where temporary relief is sought. The Commission further proposes to clarify that it is the temporary relief phase, and not the investigation, which is given the designation ''more complicated.''

Subpart I—Enforcement Proceedings and Advisory Opinions

Section 210.75(b)

Section 210.75(b) generally provides for formal enforcement proceedings. In *Vastfame Camera, Ltd.* v. *ITC,* 386 F.3d 1108 (Fed. Cir. 2004), the U.S. Court of Appeals for the Federal Circuit explained that enforcement proceedings are authorized under section 337(b) in the same manner as original investigations for violation of section 337. The Commission proposes to add a sentence to § 210.75(b)(1), and to remove contrary language from § 210.75(b)(3), to clarify that formal enforcement proceedings are conducted in accordance with the laws for original investigations as set forth in 19 U.S.C. 1337 and 5 U.S.C. 554 et seq. and the rules of this Part. The Commission further proposes to provide that the administrative law judge shall issue an enforcement initial determination no later than three months before the target date for formal enforcement proceedings.

There is a parallel proposal in § 210.51 providing that a presiding administrative law judge may set a target date for completion of a formal enforcement proceeding of 12 months or less by order, or greater than 12 months by initial determination. In this connection, the Commission proposes to amend § 210.75(b)(3) to change the length of time for the Commission to determine whether to review of enforcement initial determinations from 90 days to 45 days (from service of the enforcement initial determination). The Commission further proposes to include a reference to § 210.43. There is a parallel proposal in § 210.43, revising § 210.43 to provide that petitions for review of enforcement initial determinations are due within 10 days of service of the enforcement initial determination, and responses thereto are due within 5 business days of service of petitions for review.

Section 210.76

Section 210.76 provides for modification and rescission proceedings. The Commission proposes to codify the practice by which parties comment on the recommended determination of the administrative law judge. The Commission proposes that parties may submit comments within 10 days of service of the recommended determination, and may submit responses thereto within 5 business days from service of any comments.

Appendix A to Part 210—Adjudication and Enforcement

The appendix provides a summary of the filing dates for petitions for review of an initial determination, the filing dates for responses thereto, and the Commission deadline for determining whether to review an initial determination. The Commission proposes to update the appendix pursuant to the proposed rules for this Part, i.e., the timing of petitions of enforcement initial determinations and responses thereto in formal enforcement proceedings, and the deadline for whether to review an enforcement initial determination. The Commission further proposes to organize the contents of the Appendix by the numerical order of the rules referred to.

Appendix B to Part 210—Adjudication and Enforcement

The Commission proposes to add an Appendix B to summarize the deadlines for comments on recommended determinations for modification and rescission proceedings under § 210.76, and responses thereto.

List of Subjects

19 CFR Part 201

Administration practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201 and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

Subpart B—Initiation and Conduct of Investigations

2. Amend § 201.16 by:
a. Adding paragraphs (a)(3) and (4);
b. Revising paragraph (c)(1);
c. Revising paragraph (e); and
d. Revising the third sentence of paragraph (f).

The additions and revisions read as follows:

§ 201.16 Service of process and other documents.

(a) * * *

(3) By using an overnight delivery service to send a copy of the document to the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(4) When service is by mail, it is complete upon mailing of the document. When service is by an overnight delivery service, service is complete upon submitting the document to the overnight delivery service or depositing it in the appropriate container for pick-up by the overnight delivery service.

* * * * *

(c) * * *

(1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in § 201.8 of this part) shall be served on each other party to the investigation (as provided in § 210.4(i) of this chapter).

* * * * *

(e) *Additional time after service by overnight delivery.* Whenever a party or Federal Agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by overnight delivery, one (1) day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) days shall be added to the prescribed period if the service is to a destination outside the United States. ''Service by overnight delivery'' is defined as a method that would provide delivery by the next business day within the United States.

(f) * * * If electronic service is used, no additional time is added to the prescribed period after the service of the document to respond or take action.

* * *

PART 210—ADJUDICATION AND ENFORCEMENT

3. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart A—Rules of General Applicability

4. Amend § 210.3 adding a definition of *Ancillary proceeding* in alphabetical order to read as follows:

§ 210.3 Definitions.

* * * * *

Ancillary proceeding has the same meaning as *related proceeding.*

* * * * *

5. Amend § 210.4 by revising paragraph (f)(3) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) * * *

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§ 210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.38, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, 210.66, 210.70, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

* * * * *

6. Amend § 210.5 by adding paragraph (f) to read as follows:

§ 210.5 Confidential business information.

* * * * *

(f) When the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the Commission, or the presiding administrative law judge if the administrative law judge has issued the confidential version, shall issue a public version of the document within 30 days, unless good cause exists to extend the deadline. An administrative law judge or the Commission may extend this time by order.

7. Revise § 210.6 to read as follows:

§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) Unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§ 201.14 and 201.16(d) and (e) of this chapter.

(b) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a document upon it, and the document was served by mail, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(d), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(c) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a Commission document upon it, and the document was served by overnight delivery, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(e), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

8. Amend § 210.7 by:
a. Revising paragraph (a)(2); and
b. Revising paragraph (c).

The revisions read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), and all documents containing confidential business information as defined in § 201.6(d), issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by overnight delivery on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive

officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above in connection with an investigation under this subtitle, by serving a copy by overnight delivery on such attorney.

* * * * *

(c) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the **Federal Register** only as specifically provided in § 201.10, paragraph (c)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (c)(1) of this section, notice of the amendment will be published in the **Federal Register**.

9. Amend § 210.8 by:

a. Adding a sentence after the second sentence of paragraph (b) introductory text;

b. Adding a sentence after the fourth sentence of paragraph (c)(1) introductory text; and

c. Adding a sentence after the first sentence of paragraph (c)(2).

The additions read as follows:

§ 210.8 Commencement of preinstitution proceedings.

* * * * *

(b) * * * If the complainant files a confidential version of its submission, it shall file a public version of the submission at the same time. * * *

* * * * *

(c) * * * (1) * * * If a member of the public or proposed respondent files a confidential version of its submission, it shall file a public version of the submission at the same time. * * *

* * * * *

(2) * * * If the complainant files a confidential version of its submission, it shall file a public version of the submission at the same time.

* * * * *

Subpart C—Pleadings

10. Amend § 210.12 by:

a. Revising paragraph (a) introductory text;

b. Revising the first sentence of paragraph (a)(6)(i);

c. Revising paragraph (a)(6)(ii);

d. Revising paragraph (a)(11); and

e. Adding paragraph (a)(12).

The revisions and addition read as follows:

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§ 210.4 and 210.5 of this part, the complaint shall—

* * * * *

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1)(B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2), and include a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established (*i.e.,* for the latter, facts showing complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights, and that there is a significant likelihood that an industry will be established in the future), and including the relevant operations of any licensees. * * *

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A) (i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (i.e., for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

* * * * *

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337 (e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in § 210.52(a) or may follow the complaint as provided in § 210.53(a).

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to ''certain electronic devices,'' but the complaint would provide a further statement to identify the type of products involved in plain English as mobile devices, tablets, or computers.

* * * * *

11. Amend § 210.13 by revising the first sentence of paragraph (b) to read as follows:

§ 210.13 The response.

* * * * *

(b) * * * In addition to conforming to the requirements of §§ 210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. * * *

* * * * *

12. Amend § 210.14 by:

a. Revising the section heading;

b. Adding a sentence at the end of paragraph (a);

c. Adding a sentence after the second sentence of paragraph (b)(1); and

d. Adding paragraph (g).

The revision and additions read as follows:

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; consolidation of investigations.

(a) * * * If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) * * *

(1) * * * A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. * * *

* * * * *

(g) *Consolidation of investigations.* The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, he or she may consolidate the investigations. If the investigations are currently before different administrative law judges, the chief administrative law judge may consolidate the investigations if the administrative law judges to whom the cases are assigned agree that consolidation is appropriate. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the

matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

Subpart D—Motions

§ 210.15 [Amended]

13. Amend § 210.15 by removing the second sentence in paragraph (a)(2).

14. Amend 210.16 by:

a. Revising paragraph (b)(1);

b. Adding italic headings at the beginning of paragraphs (c)(1) and (2); and

c. Revising the last sentence of paragraph (c)(2).

The additions and revisions read as follows:

§ 210.16 Default.

* * * * *

(b) * * *

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing respondent to show cause why it should not be found in default.

(ii) If the respondent fails to make the necessary showing pursuant to paragraph (b)(1)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

* * * * *

(c) * * *

(1) *Types of relief available.* * * *

(2) *General exclusion orders.* * * * The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence and that the other requirements of 19 U.S.C. 1337(d)(2), and only after considering the aforementioned public interest factors and the requirements of § 210.50(c).

15. Amend § 210.17 by:

a. Revising the section heading;

b. Revising paragraph (f);

c. Removing paragraph (g);

d. Redesignating paragraph (h) as paragraph (g); and

e. Adding paragraph (h).

The revisions and addition read as follows:

§ 210.17 Other failure to act and default.

* * * * *

(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application for interlocutory review of an administrative law judge's order; and

* * * * *

(h) *Default by notice.* A respondent may at any time before the filing of the final initial determination file a notice of intent to default with the presiding administrative law judge. Such default will be treated in the same manner as any failure to act under this section.

* * * * *

16. Amend § 210.21 by:

a. Revising the second sentence of paragraph (b)(1);

b. Adding three sentences to the end of paragraph (c) introductory text;

c. Revising the third sentence of paragraph (c)(1)(ii);

d Revising paragraph (c)(3); and

e. Adding paragraphs (c)(4) and (5).

The revisions and additions read as follows:

§ 210.21 Termination of investigations.

* * * * *

(b) * * *

(1) * * * The motion for termination by settlement shall contain copies of any documents referenced in the motion or attached agreements. * * *

* * * * *

(c) * * * A motion for termination by consent order shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. If there are no additional agreements, the moving parties shall certify that there are no additional agreements.

(1) * * *

(ii) * * * The stipulation shall comply with the requirements of paragraph (c)(3) of this section. * * *

* * * * *

(3) *Contents of consent order stipulation*—(i) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(A) An admission of all jurisdictional facts;

(B) A statement identifying the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles.

(C) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;

(D) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part; and

(E) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure.

(ii) In the case of an intellectual property-based investigation, the consent order stipulation shall also contain—

(A) A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and

(B) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order.

(C) The consent order stipulation may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed.

(D) The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(4) *Contents of consent order.* The Commission will not issue consent orders with terms beyond those provided for in this section, and will not issue consent orders that are

inconsistent with this section. The consent order shall contain:

(i) A statement of the complainant, the respondent, the subject articles, and any allegation that the respondents sell for importation, import, or sell after importation the subject articles in violation of section 337 by reason of asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(ii) A statement that the parties have executed a consent order stipulation (but the consent order shall not contain the terms of the stipulation);

(iii) A statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation;

(iv) A statement that respondent and its agents will not sell for importation, import, or sell after importation the subject articles except under consent, license from the complainant, or to the extent permitted by the settlement agreement between complainant and respondent;

(v) A statement, if applicable, regarding the disposition of existing U.S. inventories of the subject articles.

(vi) A statement, if applicable, whether the respondent would be ordered to cease and desist from importing and distributing articles covered by the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(vii) A statement that respondent shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order;

(viii) A statement that respondent shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210;

(ix) A statement that Respondent and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the claims of the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice in any administrative or judicial proceeding to enforce the Consent Order;

(x) A statement that when the patent, copyright, trademark, mask work, boat hull design, or unfair trade practice expires the Consent Order shall become null and void as to such;

(xi) A statement that if any claim of the patent, copyright, trademark, mask work, boat hull design, or other unfair trade practice is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any articles that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim; and

(xii) A statement that the investigation is hereby terminated with respect to the respondent; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

(5) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission will not enforce consent order terms beyond those provided for in this section. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

* * * * *

Subpart E—Discovery and Compulsory Process

17. Amend § 210.28 by:

a. Adding two sentences at the end of paragraph (a); and

b. Adding a sentence after the second sentence of paragraph (c).

The additions read as follows:

§ 210.28 Depositions.

(a) * * * Without stipulation of the parties, the complainants as a group may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

* * * * *

(c) * * * A party upon whom a notice of deposition is served may respond to and make objections to a notice of deposition within ten days of service of the notice of deposition. * * *

* * * * *

18. Amend § 210.29 by adding a sentence to the end of paragraph (a) to read as follows:

§ 210.29 Interrogatories.

(a) * * * Any party may serve upon any other party written interrogatories not exceeding 175 in number including all discrete subparts, unless the parties stipulate otherwise or the presiding administrative law judge increases the number of interrogatories on written motion for good cause shown.

* * * * *

19. Amend § 210.34 by:

a. Revising paragraph (b);

b. Revising paragraph (c); and

c. Removing the Note to Paragraph (c).

The revisions read as follows:

§ 210.34 Protective orders; reporting requirements; sanctions and other actions.

* * * * *

(b) *Unauthorized disclosure, loss, or theft of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, lost, or stolen, the party responsible for the disclosure, or subject to the loss or theft, must immediately bring all pertinent facts relating to such incident to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further mishandling of such information by the party or the recipient of such information.

(c) *Violation of protective order.* (1) The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with § 210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor.

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, he shall grant or deny a motion by issuing an order.

(3) Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

(i) An official reprimand by the Commission;

(ii) Disqualification from or limitation of further participation in a pending investigation;

(iii) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(iv) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(v) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

* * * * *

Subpart G—Determinations and Actions Taken

20. Amend § 210.42 by:

a. Revising the second sentence in paragraph (a)(1)(i); and

b. Revising revising paragraph (c).

The revisions read as follows:

§ 210.42 Initial determinations.

(a)(1)(i) * * * Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 in an original investigation no later than 4 months before the target date set pursuant to § 210.51(a)(1).

* * * * *

(c) *On other matters.* (1) The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target date for a formal enforcement proceeding exceeding 12 months pursuant to § 210.51(a)(2).

(2) The administrative law judge shall grant or deny the following types of motions by issuing an initial determination: a motion for forfeiture or return of respondents' bonds pursuant to § 210.50(d) or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to § 210.70.

* * * * *

21. Amend § 210.43 by:

a. Revising the first and third sentences of paragraph (a)(1);

b. Removing the Note to Paragraph (b)(1);

c. Revising paragraph (b)(2); and

d. Revising paragraph (c).

The revisions read as follows:

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1) or (c), § 210.50(d)(3), § 210.70(c), § 210.75(b)(3) by filing a petition with the Secretary. * * * A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under § 210.50(d)(3), § 210.70(c) or § 210.75(b)(3), must be filed within 10 days after service of the initial determination.

* * * * *

(b) * * *

(2) The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Petitions for review may not incorporate statements, issues, or arguments by reference. Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44), and any argument not relied on in a petition for review will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Responses to petitions for review may not incorporate statements, issues, or arguments by reference. Any argument not relied on in a response will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

22. Amend § 210.50 by:

a. Revising the third sentence of paragraph (a)(4) introductory text;

b. Adding a sentence at the end of paragraph (a)(4)(iii);

c. Revising the first and last sentences of paragraph (d)(1)(i); and

d. Revising the first and last sentences of paragraph (d)(1)(ii).

The revisions and addition read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

* * * * *

(a) * * *

(4) * * * Submissions by the parties under this paragraph in response to the recommended determination are limited to 5 pages, inclusive of attachments.

* * * * *

(iii) * * * If a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission at the same time.

(d) * * *

(1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1)

or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. * * * If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. * * * If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

* * * * *

23. Amend § 210.51 by revising paragraph (a) to read as follows:

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of an original investigation on whether there is a violation of section 337, or an investigation which is a formal enforcement proceeding, the administrative law judge shall issue an order setting a target date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

(1) *Original investigations.* If the target date does not exceed 16 months from the date of institution of an original investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

(2) *Formal enforcement proceedings.* If the target date does not exceed 12 months from the date of institution of the formal enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 12 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 12 months, before the formal enforcement proceeding is certified to the Commission, shall be by initial determination.

* * * * *

Subpart H—Temporary Relief

24. Amend § 210.54 by revising the first sentence to read as follows:

§ 210.54 Service of motion by the complainant.

Notwithstanding the provisions of § 210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint and motion for temporary relief, if any, with the Commission (see § 210.8(a)(1) and (a)(2) of subpart B of this part), the complainant must serve non-confidential copies of both documents (as well as non-confidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint. * * *

25. Amend § 210.56 by revising the third sentence of paragraph (a) to read as follows:

§ 210.56 Notice accompanying service copies.

(a) * * * Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 210.4, 210.5, 210.8, and 210.12. * * *

* * * * *

26. Amend § 210.58 by revising the third sentence to read as follows:

§ 210.58 Provisional acceptance of the motion.

* * * Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§ 210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§ 210.4, and 210.5. * * *

27. Amend § 210.59 by:

a. Revising the introductory text to paragraph (b); and

b. Revising paragraph (c).

The revisions read as follows:

§ 210.59 Response to the motion and the complaint.

* * * * *

(b) The response must comply with the requirements of §§ 210.4 and 210.5 of this part, and shall contain the following information:

* * * * *

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §§ 210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under § 210.34 of this part.

28. Amend § 210.60 by:

a. Revising the section heading;

b. Designating the existing text as paragraph (a) and revising its first two sentences; and

c. Adding paragraph (b).

The revision and addition read as follows:

§ 210.60 Designating the temporary relief phase of an investigation more complicated for the purpose of adjudicating a motion for temporary relief.

(a) At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to § 210.58, or at any time thereafter, the Commission may designate the temporary relief phase of an investigation ''more complicated'' pursuant to § 210.60(b) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under § 210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the temporary relief phase of the investigation ''more complicated'' for the purpose of obtaining additional time to adjudicate the motion for temporary relief. * * *

(b) A temporary relief phase is designated more complicated owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors.

Subpart I—Enforcement Procedures and Advisory Opinions

29. Amend § 210.75 by:

a. Adding a sentence at the end of paragraph (b)(1); and

b. Revising paragraph (b)(3).

The revisions read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

* * * * *

(b) * * *

(1) * * * These proceedings are authorized under section 337(b) as investigations on whether there is a violation of section 337 in the same manner as original investigations, and are conducted in accordance with the laws for original investigations as set forth in section 1337 of title 19 and sections 554, 555, 556, 557, and 702 of title 5 of the United States Code and the rules of this part.

* * * * *

(3) The Commission, in the course of a formal enforcement proceeding under this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. A presiding administrative law judge shall certify the record and issue the enforcement initial determination to the Commission no later than three months before the target date for completion of a formal enforcement proceeding. Parties may file petitions for review, and responses thereto, in accordance with § 210.43 of this part. The enforcement initial determination shall become the determination of the Commission 45 days after the date of service of the enforcement initial determination, unless the Commission, within 45 days after the date of such service, shall have ordered review of the enforcement initial determination on certain issues therein, or by order shall have changed the effective date of the enforcement initial determination.

* * * * *

30. Amend § 210.76 by adding paragraph (c) to read as follows:

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.

* * * * *

(c) *Comments.* Parties may submit comments on the recommended determination within 10 days from the service of the recommended determination. Parties may submit responses thereto within 5 business days from service of any comments.

31. Revise appendix A to read as follows:

Appendix A to Part 210–Adjudication and Enforcement

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation § 210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination (on private parties).
2. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
3. Other matters § 210.42(c)	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination (on private parties).
4. Forfeiture or return of respondents' bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
5. Forfeiture or return of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
6. Formal enforcement proceedings § 210.75(b).	10 days from service of the enforcement initial determination.	5 business days from service of any petition.	45 days from service of the enforcement initial determination (on private parties).

32. Add appendix B to read as follows:

Appendix B to Part 210—Adjudication and Enforcement

Recommended determination concerning:	Comments due:	Response to comments due:
Modification or Rescission § 210.76(a)(1)	10 days from service of the recommended determination.	5 business days from service of any comments.

Issued: July 2, 2012.

By Order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–16603 Filed 7–11–12; 8:45 am]

BILLING CODE 7020–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2011–0084; FRL–9698–8]

Air Quality Implementation Plans; Alabama; Attainment Plan for the Alabama Portion of the Chattanooga 1997 Annual $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) to EPA on October 7, 2009, for the purpose of providing for attainment of the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the Alabama portion of the tri-state Chattanooga $PM_{2.5}$ nonattainment area (hereafter referred to as the ''Chattanooga Area'' or ''Area''). The Chattanooga Area is comprised of

Catoosa and Walker Counties in Georgia; Hamilton County in Tennessee; and a portion of Jackson County in Alabama. The Alabama SIP revision (hereafter referred to as the ''attainment plan'') pertains only to the Alabama portion of the Chattanooga Area (hereafter referred to as ''Jackson County''). EPA is now proposing to approve Alabama's October 7, 2009, SIP revision regarding reasonably available control technology (RACT) and reasonably available control measures (RACM); reasonable further progress (RFP); contingency measures; and, for transportation conformity purposes, an insignificance determination for $PM_{2.5}$ and nitrogen oxides (NOx) for the mobile source contribution to ambient $PM_{2.5}$ levels for the Alabama portion of the Chattanooga Area. This action is being taken in accordance with the Clean Air Act (CAA or Act) and the ''Clean Air Fine Particle Implementation Rule,'' hereafter referred to as the ''$PM_{2.5}$ Implementation Rule,'' issued by EPA on April 25, 2007. The States of Georgia and Tennessee have provided separate SIP revisions with attainment plans for their portions for the Chattanooga Area. EPA is not addressing those SIP revisions in this proposed rulemaking.

DATES: Written comments must be received on or before August 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R04–OAR–2011–0084 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2011–0084, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0084. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Richard Wong of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov.* Richard Wong may be reached by phone at (404) 562–8726, or via electronic mail at *wong.richard@epa.gov.*

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I. What action is EPA proposing to take?

EPA is proposing to approve Alabama's SIP revision for the Alabama portion of the Chattanooga Area, as submitted through the ADEM to EPA on October 7, 2009, for the purpose of demonstrating attainment of the 1997 Annual $PM_{2.5}$ NAAQS. Alabama's $PM_{2.5}$ attainment plan for Jackson County includes an analysis of RACM/RACT, an RFP plan, contingency measures, and an insignificance determination for mobile direct $PM_{2.5}$ and NO_X emissions for transportation conformity purposes. EPA previously approved the base year emissions inventory for the Alabama portion of the Chattanooga Area on February 8, 2012 (77 FR 6469).

EPA has determined that Alabama's $PM_{2.5}$ attainment plan for the 1997 Annual $PM_{2.5}$ NAAQS for Jackson County meets the applicable requirements of the CAA and the $PM_{2.5}$

Implementation Rule. Thus, EPA is proposing to approve Alabama's attainment plan for Jackson County, including the insignificance determination for direct $PM_{2.5}$ and NO_X for Alabama's mobile source contribution to ambient $PM_{2.5}$ levels in the Chattanooga Area. EPA's analysis for this proposed action is discussed in Section IV of this proposed rulemaking.

II. What is the background for EPA's proposed action?

A. Designation History

On July 18, 1997 (62 FR 38652), EPA established the 1997 $PM_{2.5}$ NAAQS as an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ emissions.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999 and established a complete set of air quality monitors by January 2001. On January 5, 2005, EPA promulgated initial air quality designations for the 1997 $PM_{2.5}$ NAAQS (70 FR 944), which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–2003.

On April 14, 2005, EPA promulgated a supplemental rule amending the Agency's initial designations (70 FR 19844) but retaining the original effective date of April 5, 2005. As a result of that supplemental rule, $PM_{2.5}$ nonattainment designations were in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of about 88 million. The Alabama portion of the tri-state (Tennessee, Georgia and Alabama) Chattanooga Area, which is the subject of this proposed rulemaking, is included in the list of areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. As mentioned above, the Alabama portion of the Chattanooga Area consists of a portion of Jackson County in Alabama.

On October 17, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ and retained the level of the Annual $PM_{2.5}$ NAAQS at 15.0 $\mu g/m^3$. *See* 71 FR 61144. On November 13, 2009, EPA designated areas as attainment/unclassifiable, unclassifiable or nonattainment with respect to the 2006 24-Hour $PM_{2.5}$ NAAQS. *See* 74 FR 58688. Of relevance to the proposed rulemaking herein, EPA's November 2009 designation action clarified the designations for the 1997 $PM_{2.5}$ NAAQS by relabeling the existing designation tables to specifically identify designations made for the 1997 Annual $PM_{2.5}$ NAAQS and those made for the 1997 24-hour $PM_{2.5}$ NAAQS (*i.e.,* 65 $\mu g/m^3$). The Alabama portion of the Chattanooga Area is only designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. Accordingly, this action only pertains to that specific NAAQS.

B. Clean Air Fine Particle Implementation Rule

As noted above, on April 25, 2007, EPA issued the $PM_{2.5}$ Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20586). This rule describes the CAA framework and requirements for developing SIPs to achieve attainment in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. Such attainment plans must include a demonstration that a nonattainment area will meet the applicable NAAQS within the timeframe provided in the statute. This demonstration must include modeling that is performed in accordance with 40 CFR 51.112 (Demonstration of adequacy) and Appendix W to part 51 (Guideline on Air Quality Models) and that is consistent with EPA modeling guidance. *See* 40 CFR 51.1007. The modeling demonstration should include supporting technical analyses and descriptions of all relevant adopted Federal, state, and local regulations and control measures that have been adopted in order to provide for attainment of the 1997 $PM_{2.5}$ NAAQS by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment demonstration must show that a nonattainment area will attain the standards as expeditiously as practicable, but within 5 years of designation (*i.e.,* by an attainment date of no later than April 5, 2010, based on air quality data for 2007 through 2009). If the area is not expected to meet the NAAQS by April 5, 2010, a state may request to extend the attainment date by 1 to 5 years based upon the severity of the nonattainment problem or the feasibility of implementing control measures in the specific area. CAA section 172(a)(2). For EPA to approve an extension of the attainment date beyond 2010, the state must provide an analysis that is consistent with the statutory criteria for an extension and that demonstrates that the attainment date is as expeditious as practicable for the area, given the existing facts and circumstances.

For each nonattainment area, the state (or each state of a multi-state area) must demonstrate that it has adopted all RACM, including all RACT, as needed to provide for attainment of the $PM_{2.5}$ NAAQS in the area ''as expeditiously as practicable.'' The $PM_{2.5}$ Implementation Rule provides guidance for making these RACM/RACT determinations. *See* discussion in section IV.A.4. below. Any measures that are necessary to meet these requirements that are not already federally promulgated or in an EPA-approved part of the SIP must be submitted as part of a state's attainment plan. Any state measures in the control strategy must meet the applicable statutory and regulatory requirements, and, in particular, must be enforceable.

The $PM_{2.5}$ Implementation Rule also includes guidance on precursor pollutants that states must address in their attainment plans. Section 302(g) of the CAA authorizes EPA to regulate criteria pollutants and their precursors. The main chemical precursors associated with fine particle formation are sulfur dioxide (SO_2), NO_X, volatile organic compounds (VOC), and ammonia. However, the effect of reducing emissions of precursor pollutants that contribute to $PM_{2.5}$ concentrations varies by area depending upon local $PM_{2.5}$ composition, emission levels, and other area-specific factors. For this reason, the $PM_{2.5}$ Implementation Rule requires that states control the direct $PM_{2.5}$ and SO_2 emissions and also that states control the other precursor emissions that would be most effective for attaining the NAAQS within the specific area, based upon an appropriate technical demonstration.

The $PM_{2.5}$ Implementation Rule defines direct $PM_{2.5}$ emissions as ''solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).'' *See* 40 CFR 51.1000.

The $PM_{2.5}$ Implementation Rule requires states to identify and evaluate sources of $PM_{2.5}$ direct emissions and

$PM_{2.5}$ attainment plan precursors as appropriate. *See* 40 CFR 51.1002(c). The rule requires states to address SO_2 as a $PM_{2.5}$ attainment plan precursor and to evaluate SO_2 for possible control measures in all $PM_{2.5}$ nonattainment areas. States are also required to address and evaluate reasonable controls for NO_X as a $PM_{2.5}$ attainment plan precursor unless the state and EPA make a finding that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

Although current scientific information shows that certain VOC emissions are precursors to the formation of secondary organic aerosol, and significant progress has been made in understanding the role of gaseous organic material in the formation of organic PM, this relationship remains complex. Further research and technical tools are needed to better characterize emissions inventories for specific VOC and to determine the extent of the contribution of specific VOC to organic PM mass. Because of these factors, the $PM_{2.5}$ Implementation Rule does not require states to address or evaluate controls for VOC as $PM_{2.5}$ attainment plan precursors unless the state or EPA makes a finding that VOC emissions from sources in the state significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

The $PM_{2.5}$ Implementation Rule describes the formation of particles related to ammonia emissions, which is a complex, nonlinear process. Though recent studies have improved our understanding of the role of ammonia in aerosol formation, further research is needed to better describe the relationship between ammonia emissions and particulate matter concentrations and the related impacts. Also, area-specific data is needed to evaluate the effectiveness of reducing ammonia emissions in reducing $PM_{2.5}$ concentrations in different areas and to determine where ammonia decreases may increase the acidity of particles and precipitation. For these reasons, the $PM_{2.5}$ Implementation Rule does not require states to address or evaluate controls for ammonia as $PM_{2.5}$ attainment plan precursors unless the state or EPA makes a finding that ammonia emissions from sources in the state significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

The presumptive inclusion of NO_X and the presumptive exclusion of VOC and ammonia as attainment plan precursors can be reversed based on an acceptable technical demonstration for a particular nonattainment area by the state or EPA. The state must demonstrate that, based on the sum of available technical and scientific information, it would be appropriate for a nonattainment area to reverse the presumptive approach for a particular precursor. Such a demonstration should include information from multiple sources, such as results of speciation data analyses, air-quality modeling studies, chemical-tracer studies, emissions inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area. *See* $PM_{2.5}$ Implementation Rule, 72 FR 20596.

The $PM_{2.5}$ Implementation Rule also provides guidance for the other elements of a state's attainment plan, including, but not limited to, emissions inventories, contingency measures, and motor-vehicle emissions budgets used for transportation conformity purposes. There are, however, three aspects of the preamble to the $PM_{2.5}$ Implementation Rule for which EPA received petitions requesting reconsideration. The specific guidance elements identified by petitioners pertain to the presumption that compliance with the requirements of the Clean Air Interstate Rule (CAIR) automatically satisfies the requirements for RACT or RACM for NO_X or SO_2 emissions from electric generating unit (EGU) sources participating in regional cap and trade programs (*See* $PM_{2.5}$ Implementation Rule, section II.F.7.); the suggestion that the economic feasibility element of a RACT determination should include consideration of whether the cost of a measure is reasonable in light of the benefits (*See* $PM_{2.5}$ Implementation Rule, section II.F.5.); and the policy of allowing certain emission reductions from outside the nonattainment area to be credited as meeting the RFP requirement (*See* $PM_{2.5}$ Implementation Rule, section II.G.5.). EPA has granted these petitions and intends to propose rulemaking to address these aspects of the $PM_{2.5}$ Implementation Rule.

C. The Clean Air Interstate Rule and the Transport Rule

EPA published CAIR on May 12, 2005, to address the interstate transport requirements of the CAA. *See* 76 FR 70093. As originally promulgated, CAIR requires significant reductions in emissions of SO_2 and NO_X to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. In 2008, however, the D.C. Circuit remanded CAIR back to EPA. *North Carolina* v. *EPA,* 550 F.3d 1176. The court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *North Carolina* v. *EPA,* 550 F.3d at 1178. CAIR thus remained in place following the remand and was in place and enforceable through the April 5, 2010, attainment date.

In response to the court's decision, EPA has issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (*i.e.,* the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (*i.e.,* discontinue) CAIR and the CAIR FIPs for control periods in 2012 and beyond. *See* 76 FR 48322.

On December 30, 2012, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolution of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

EPA does not believe that the circumstances set forth above preclude EPA from approving the attainment plan for the Alabama portion of the Chattanooga Area. While the monitoring data that shows the Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to acting on this attainment plan. Moreover, EPA's analysis conducted for the Transport Rule demonstrates that the Chattanooga Area would be able to attain the 1997 Annual $PM_{2.5}$ NAAQS even in the absence of either CAIR or the Transport Rule. *See* Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Cross-State Air Pollution Rule.

Most importantly, EPA notes that this action proposes approval of an attainment plan that demonstrated that the Chattanooga Area would attain the 1997 Annual $PM_{2.5}$ NAAQS by 2010, which the Area did. As of 2010, CAIR

was an enforceable control measure applicable to affected sources in the Area, as well as sources throughout the eastern U.S. As such, the fact that CAIR is now in place only temporarily as a result of the judicial remand of CAIR does not detract from our conclusion that the attainment plan should be approved. Further, the fact that the court has stayed the implementation of the Transport Rule at this time is not relevant because, as noted above, EPA's modeling for the Transport Rule demonstrates the Chattanooga Area would be able to attain the 1997 Annual $PM_{2.5}$ even in the absence of the Transport Rule. Finally, the Transport Rule, as promulgated, only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the judicial stay of the Transport Rule, is relevant to the question addressed in this proposal notice. The purpose of this action is to determine whether the attainment plan submitted by Alabama is sufficient for bringing the Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

D. Attaining Data Determination and Finding of Attainment

On May 31, 2011, EPA determined that the Chattanooga Area had attaining data for the 1997 Annual $PM_{2.5}$ NAAQS. *See* 76 FR 31239. That determination was based on quality-assured, quality controlled and certified ambient air monitoring data that shows the Area met the 1997 Annual $PM_{2.5}$ NAAQS. Furthermore, on September 8, 2011, in accordance with CAA 179(c), EPA determined that the Chattanooga Area attained the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. *See* 76 FR 55774. This information is mentioned here in support of EPA's determination that Alabama's attainment plan was sufficient for the Chattanooga Area to achieve attainment by no later than the required attainment date of April 5, 2010.

As discussed in the May 31, 2011, rulemaking, EPA's determination of attainment [1] suspended the obligation for the State to meet planning SIP requirements for the Chattanooga Area for so long as the Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). The State must still submit required emissions inventories consistent with applicable timelines. The suspended SIP submission obligations include the attainment demonstration (including in this case the mobile source insignificance determination submitted to satisfy transportation conformity requirements), the RACM/RACT analysis and requirements, the RFP requirements as applicable, and contingency measures. Despite the suspension of the aforementioned attainment plan requirements for the Chattanooga Area for the 1997 Annual $PM_{2.5}$ NAAQS, Alabama has requested that EPA take action on its planning SIP for this Area in part because the SIP submittal includes the insignificance determination for conformity purposes. Further, in September 2011, EPA agreed in a Consent Decree to take action on the State's attainment plan SIP submission, including these specific plan elements that would otherwise be suspended.

Monitoring data thus far available in the Air Quality System (AQS) database for 2011 show that this Area continues to meet the 1997 Annual $PM_{2.5}$ NAAQS at this time. As shown in Table 4, found later in this notice, ambient $PM_{2.5}$ levels in the Chattanooga Area have declined steadily since Alabama submitted its $PM_{2.5}$ attainment plan in 2008.

EPA understands that the State chose not to withdraw the attainment plan SIP revision for the Alabama portion of the Chattanooga Area because it includes a mobile insignificance determination for direct $PM_{2.5}$ and NO_X emissions from mobile sources. Therefore, as mentioned above, although the SIP planning requirements for the 1997 Annual $PM_{2.5}$ NAAQS have been suspended for the Chattanooga Area, EPA is acting on these elements of Alabama's attainment plan for the Alabama portion of the Chattanooga Area because the State has requested it and elected not to withdraw these elements.[2]

[1] The determination of attainment is not a redesignation of the Area from nonattainment to attainment and is not an indication that the Area will continue to maintain the standard for which the determination is made. It is merely a determination that the Area attained the standard for a particular three year period and also by the applicable deadline. Please see EPA's May 31, 2011, rulemaking for more detail on the effects of a determination of attainment.

[2] The State of Georgia withdrew its attainment plan submittal for the Georgia portion of the Chattanooga Area on June 29, 2011. The State of Tennessee has not yet withdrawn its attainment plan submittal for the Tennessee portion of the Chattanooga Area, however, EPA is not acting on that submittal at this time.

III. What is included in Alabama's attainment plan submittal for Jackson County?

Alabama's attainment plan submittal for the 1997 Annual $PM_{2.5}$ NAAQS covers the Alabama portion of the Chattanooga Area, which is the only portion of such Area for which the State has jurisdiction. Today's action addresses only the Alabama portion of the Chattanooga Area. However, the modeling analysis provided with Alabama's attainment plan documentation includes modeling results for the entire tri-state Area that also includes the results of Georgia's and Tennessee's demonstrations for their portions of the Area, for which the conclusions of attainment are consistent with that of Alabama's. The analysis indicates that the entire Area across the three states will attain the NAAQS, and thus supports this proposed approval action.

In accordance with section 172(c) of the CAA and the $PM_{2.5}$ Implementation Rule, the Alabama attainment plan for the Chattanooga Area includes: (1) An emissions inventory for the plan's base year (2002); (2) an attainment demonstration; and (3) an insignificance finding for the mobile source contribution of direct $PM_{2.5}$ and NO_X. The attainment demonstration includes: Technical analyses that locate, identify, and quantify sources of emissions contributing to violations of the 1997 Annual $PM_{2.5}$ NAAQS; analyses of future-year emissions reductions and air quality improvements expected to result from national and local programs; adopted emission reduction measures with schedules for implementation; and contingency measures required under section 172(c)(9) of the CAA. *See* 72 FR 20605.

To analyze future-year emissions reductions and air quality improvements, Alabama used regional modeling analyses developed through the Association for Southeastern Integrated Planning (ASIP). The ASIP was a collaborative modeling and technical analysis effort among the States of Alabama, Kentucky, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia to develop a regional assessment of the controls needed to achieve attainment of the 1997 $PM_{2.5}$ NAAQS and the 2008 8-hour ozone NAAQS. This regional modeling was performed in accordance with EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (EPA–454/B–07–002, April 2007)

(hereafter referred to as ''EPA's Modeling Guidance'').

IV. What is EPA's analysis of Alabama's attainment plan submittal for Jackson County?

A. Attainment Demonstration

Consistent with CAA requirements (*See, e.g.,* section 172), and 40 CFR 51.1007, an attainment demonstration for a $PM_{2.5}$ nonattainment area must include a showing that the area will attain the 1997 $PM_{2.5}$ annual and 24-hour standards as expeditiously as practicable. The demonstration must also meet the requirements of 40 CFR 51.112 and Part 51, Appendix W, and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment. In the case of the Chattanooga Area, the Area has already attained the 1997 $PM_{2.5}$ Annual NAAQS. Thus, EPA is now proposing that the attainment plan submitted by Alabama was sufficient, and EPA is proposing to approve individual components of the plan.

1. Pollutants Addressed

As discussed in section II.B. above, the $PM_{2.5}$ Implementation Rule requires states to identify and evaluate sources of $PM_{2.5}$ direct emissions and appropriate $PM_{2.5}$ attainment plan precursors. The rule provides that SO_2 is a $PM_{2.5}$ attainment plan precursor in all areas. The rule also sets forth the rebuttable presumptions that NO_X is a $PM_{2.5}$ attainment plan precursor in all areas and that ammonia and VOC are not $PM_{2.5}$ attainment plan precursors in any areas. Neither Alabama nor the EPA has found reason to reverse any of these presumptions for the Chattanooga Area. Accordingly, Alabama's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, SO_2, and NO_X in Jackson County.

2. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the area. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the 1997 $PM_{2.5}$ NAAQS is as expeditious as practicable and, if an attainment date extension beyond 2010 is needed, to support the need for such an extension. Emissions inventory guidance was provided in the April 1999 document, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations'' (EPA–454/R–99–006), which was updated in November 2005 (EPA–454/R–05–001) (hereafter referred to as ''EPA's Emissions Inventory Guidance''). Emissions reporting requirements were provided in the 2002 Consolidated Emissions Reporting Rule (CERR) (67 FR 39602). On December 17, 2008 (73 FR 76539), EPA promulgated the Air Emissions Reporting Requirements (AERR) to update emissions reporting requirements in the CERR and to harmonize, consolidate and simplify data reporting by states.

In accordance with the AERR and EPA's Emissions Inventory Guidance, the $PM_{2.5}$ Implementation Rule requires states to submit inventory information on directly emitted $PM_{2.5}$ and the main $PM_{2.5}$ precursors (SO_2, NO_X, VOC, and ammonia) and any additional inventory information needed to support an attainment demonstration and (where applicable) an RFP plan.

$PM_{2.5}$ is comprised of filterable and condensable emissions. Condensable particulate matter (CPM) can comprise a significant percentage of direct $PM_{2.5}$ emissions from certain sources and is required to be included in national emissions inventories based on emission factors. Test Methods 201A and 202 are available for source-specific measurement of condensable emissions. However, the $PM_{2.5}$ Implementation Rule notes that there were issues raised by the Commenters related to availability and implementation of these test methods as well as uncertainties in existing data for condensable $PM_{2.5}$. EPA thus established a transition period during which EPA could assess possible revisions to available test methods and to allow time for states to update emissions inventories as needed to fully address direct $PM_{2.5}$, including condensable emissions. Because of the time required for this assessment, EPA recognized that states would be limited in how to effectively address CPM emissions and therefore established a period of transition, up to January 1, 2011, during which state submissions for $PM_{2.5}$ were not required to address CPM emissions. Amendments to these test methods were proposed on March 25, 2009 (74 FR 12969), and finalized on December 21, 2010 (75 FR 80118). The amendments to Method 201A added a particle-sizing device for $PM_{2.5}$ sampling, and the amendments to Method 202 revised the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of CPM emissions.

The period of transition for establishing emission limits for condensable direct $PM_{2.5}$ ended on January 1, 2011. Under the $PM_{2.5}$ Implementation rule, $PM_{2.5}$ submissions made during the transition period are not required to address CPM emissions; however, states must address the control of direct $PM_{2.5}$ emissions, including condensable emissions, with any new action taken after January 1, 2011. Alabama submitted its Chattanooga Area attainment plan prior to January 1, 2011, and accordingly did not consider CPM in addressing the control of $PM_{2.5}$ emissions.

In July 2008, EarthJustice filed a petition requesting reconsideration of EPA's transition period for CPM emissions provided in the $PM_{2.5}$ Implementation Rule. In January 2009, EPA decided to allow states that have not previously addressed CPM to continue to exclude CPM for Prevention of Significant Deterioration permitting during the transition period. Today's action reflects a review of Alabama's submittal based on applicable EPA guidance as described in the $PM_{2.5}$ Implementation Rule and at the time of Alabama's submittal.

The 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the AERR for all source categories (*i.e.,* point, area, nonroad mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in the attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that the State submitted as part of the attainment plan for this Area. The State based the 2002 emissions inventory on data developed with Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors for the same ten states of the ASIP effort and submitted by the states to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed by VISTAS for the different emission source categories resulting from revisions and updates to the data. This resulted in version G2 of the updated data, which VISTAS and states used to represent point source emissions. Data from many databases, studies and models (*e.g.,* vehicle miles traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.)

resulted in the emissions inventory submitted by the State as part of this attainment plan. The data were developed by VISTAS according to EPA's Emissions Inventory Guidance and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this emissions inventory was adequate to meet the requirements of the CAA, *e.g.,* CAA section 172(c)(3), and the implementing regulations.

Table 1 below shows the level of emissions, expressed in tons per year (tpy), in the Alabama portion of the Chattanooga Area for the 2002 base year by pollutant and emissions source category, as provided in the October 7, 2009, attainment plan. As stated earlier in this notice, EPA approved the base year emissions inventory for the Alabama portion of the Chattanooga Area on February 8, 2012 (77 FR 6469), as meeting the requirements of section 172(c)(3) of the CAA. The emissions inventory was approved because the State developed the emissions inventory consistent with the CAA, implementing regulations, and EPA guidance for emissions inventories.

TABLE 1—BASE YEAR (2002) ACTUAL EMISSIONS INVENTORY FOR THE ALABAMA PORTION OF THE CHATTANOOGA AREA

Source category	NO_X (tpy)	SO_2 (tpy)	$PM_{2.5}$ (tpy)	VOC (tpy)	Ammonia (tpy)
Point	26,337	44,080	933	144	2
Area	10	17	38	98	38
Mobile	7	6	0	18	0
Nonroad	41	5	3	47	0
Total	26,395	44,108	974	307	40

Table 2 below shows the level of emissions projected by VISTAS and the State for the 2009 attainment year. While the projections for the two point sources in the Alabama portion of the Chattanooga Area indicated a slight increase in SO_2 and direct $PM_{2.5}$ emissions, the overall 2009 statewide emission projections for Alabama, Tennessee and Georgia indicated significant decreases in SO_2 emissions. The projected 2009 emissions inventories were used by VISTAS in the modeling demonstration of attainment for the Area by that year. Although the projected 2009 emissions of SO_2 and direct $PM_{2.5}$ from point sources in the Alabama portion of the Chattanooga Area indicated a slight increase from the 2002 actual emissions, the actual 2009 emissions that are now recorded in AQS show that significant reductions occurred in these pollutant emissions.

TABLE 2—ATTAINMENT YEAR (2009) PROJECTED EMISSIONS INVENTORY FOR THE ALABAMA PORTION OF THE CHATTANOOGA AREA

Source category	NO_X (tpy)	SO_2 (tpy)	$PM_{2.5}$ (tpy)	VOC (tpy)	Ammonia (tpy)
Point	5,157	45,356	1,124	177	8
Area	10	16	39	69	41
Mobile	5	1	0	11	1
Nonroad	38	2	2	37	0
Total	5,210	45,375	1,165	294	50

Additional emissions inventory information for the Alabama portion of the Chattanooga Area is included in Appendix 3 of Alabama's attainment SIP submittal. Emissions inventories for the Tennessee and Georgia portions of the Area are included in Appendices 1 and 2, respectively, of Alabama's attainment SIP submittal. This additional information is available in the docket for this final action (EPA–R04–OAR–2011–0084) on the *www.regulations.gov* Web site.

3. Modeling

The $PM_{2.5}$ attainment demonstrations must include modeling that should be developed in accordance with EPA's Modeling Guidance. A brief description of the modeling used to support Alabama's attainment demonstration follows. More detailed information can be found in Alabama's October 7, 2009, SIP revision in the docket for this proposed action (EPA–R04–OAR–2011–0084) on the *www.regulations.gov* Web site.

Ambient $PM_{2.5}$ typically includes both primary (directly emitted) $PM_{2.5}$ and secondary $PM_{2.5}$ (*e.g.,* sulfates (SO_4) and nitrates (NO_3) formed by chemical reactions in the atmosphere). Some of the physicochemical processes leading to the formation of secondary $PM_{2.5}$ may take hours or days, as may some of the removal processes. Thus, some sources of secondary $PM_{2.5}$ may be sources outside of the nonattainment area. To model a sufficient geographic area to take these processes into account, Alabama's regional modeling domain covered an area slightly greater than the geographical area of the VISTAS/ASIP states in this attainment demonstration.

Alabama, through the ASIP and VISTAS, conducted an analysis of the major contributing components of $PM_{2.5}$ in the Alabama portion of the Chattanooga Area. Specifically, organic carbon (OC) and SO_4 account for the largest contributions. The majority of OC can be attributed to biogenic emissions and SO_4 to emissions of SO_2. SO_2 emissions are primarily associated with the point source sector. Emissions sensitivity modeling for the Chattanooga Area indicated that SO_2 emissions reductions from EGUs in Alabama, Georgia, Tennessee, and Kentucky would have the greatest benefits for the Area. The VISTAS modeling also projects limited benefits to total ambient $PM_{2.5}$ from reductions of NO_X emissions. *See* Figure 6–1 of the SIP Narrative of Alabama's attainment SIP submittal. EPA preliminarily agrees

with Alabama's assertion that controlling SO_2 from point sources is the most effective means of addressing attainment of the 1997 Annual $PM_{2.5}$ NAAQS in the Chattanooga Area.

Model Selection and Inputs

The ASIP performed modeling for ozone and $PM_{2.5}$ for the 10 collaborating southeastern states, including Alabama. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. The ASIP and/or VISTAS used the following modeling system:

- *Meteorological Model:* The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, ozone, $PM_{2.5,}$ and regional haze regulatory modeling studies.
- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire and biogenic emission sources for photochemical grid models.
- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, particulate matter, visibility and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2009 was carried out on a grid of 12x12 kilometer cells that covers the ten VISTAS states and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. Based upon an in-depth statistical analysis tool referred to as Classification and Regression Tree (CART) analysis, VISTAS evaluated and compared the years 2000 through 2004 and selected calendar year 2002 as the most representative meteorological year available for conducting the CMAQ modeling. *See* Georgia's State Implementation Plan for the Chattanooga $PM_{2.5}$ Nonattainment Area for Catoosa and Walker Counties, Appendix D, Chapter 4, which is Appendix 2 to the Alabama attainment plan submittal. As noted above, the VISTAS and ASIP states modeling was developed consistent with EPA's Emissions Inventory Guidance and EPA's Modeling Guidance.

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the assessment of attainment of the $PM_{2.5}$ NAAQS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the 2009 $PM_{2.5}$ control strategy. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. A diverse set of statistical parameters from the EPA's Modeling Guidance was used to stress and examine the model and modeling inputs. Once the model performance of the 2002 base year was determined by VISTAS to be acceptable, the EPA model attainment test was used to assess whether attainment of the $PM_{2.5}$ NAAQS would be achieved in 2009.

Alabama provided the appropriate supporting documentation for all required analyses performed by the State and also provided, in appendices to their submittal as corroborating information, the final Tennessee and Georgia attainment demonstration SIPs for the Chattanooga Area. The technical analyses and modeling used to assess attainment in 2009 for the Area is consistent with the CAA, EPA's $PM_{2.5}$ Implementation Rule and EPA's Modeling Guidance. EPA proposes to accept the VISTAS and ASIP technical modeling to support the attainment SIP for the Area because the modeling system was chosen and simulated according to EPA's Modeling Guidance. For purposes of the Chattanooga attainment demonstration, EPA preliminarily agrees with the VISTAS model performance procedures and results, and preliminarily agrees that the CMAQ is an appropriate tool for the assessment of $PM_{2.5}$ for the Alabama attainment demonstration for this Area. Additional details on the ASIP and VISTAS modeling is included in Appendices 1 and 2 of the Alabama SIP, which are the final attainment demonstration SIPs for the Chattanooga Area adopted by the States of Tennessee and Georgia, respectively. Due in part to the location of the ambient $PM_{2.5}$ monitors and the significant pollution sources in Tennessee and Georgia, these states completed their attainment demonstration SIPs before Alabama. Because all three states relied upon the same ASIP/VISTAS modeling as the basis for the attainment demonstration for this tri-state nonattainment area, Alabama included the Tennessee and Georgia submittals as appendices to their submittal.

Modeling Results

The modeling results were used in a relative sense in concert with observed ambient air quality data (*i.e.,* taking the ratio of the modeled future $PM_{2.5}$ concentration to the modeled present $PM_{2.5}$ concentration and multiplying that by a $PM_{2.5}$ ''baseline design value''). EPA recommends using a baseline design value that is the average of the three design value periods that straddle the baseline inventory year (*e.g.,* the average of the 2000–2002, 2001–2003, and 2002–2004 design value periods for a 2002 baseline inventory year). This average design value best represents the baseline concentrations while taking into account the variability of meteorology and emissions (over a five-year period). This EPA attainment test approach should reduce some of the uncertainty involved with using absolute model predictions alone. Using the model in a relative sense also reduces the effects of uneven model performance and possible major biases in predicting absolute concentrations of one or more components. The ratio of future to present model predicted air quality resulted in relative reduction factors (RRF). The multiplication of the RRF by an ambient design value from the base year (*i.e.,* 2002) provided estimates of future design values to determine if areas with monitors in the nonattainment area will comply with the 1997 Annual $PM_{2.5}$ NAAQS.

EPA provided guidance to states and tribes for projecting $PM_{2.5}$ concentrations using a ''speciated modeled attainment test'' (SMAT) (EPA–454/B–07–002, April 2007). Once modeling for a projection year and a base year are complete, RRFs are computed for each component of $PM_{2.5}$ in the modeling domain. Modeling presented by Alabama, corroborated by Tennessee and Georgia as supplemental modeling (*See* Appendices 1 and 2 of the Alabama SIP in the docket), was used to assess attainment in the entire

Chattanooga Area and used the following components of $PM_{2.5}$: SO_4, NO_3, directly emitted organic particles, and directly emitted inorganic particles. Ammonia is treated as part of SO_4 and NO_3 molecules, and water is assumed to be present at a constant mass in both the base year and projection year. For each monitoring location, the RRF for a component is computed as the ratio of the projection year divided by the base year modeled concentration for a three-cell by three-cell array of modeled grid cells centered on the monitoring location.

Projection year component concentrations are estimated by multiplying the RRFs by a monitoring based base year component concentration, determined by applying measured speciation data to the monitored total $PM_{2.5}$ design concentration. The sum of these estimated projection year component concentrations is the estimated projection year $PM_{2.5}$ concentration. If future estimates of $PM_{2.5}$ concentrations are less than the 1997 $PM_{2.5}$ NAAQS, then the modeling indicates attainment of the standard.

$PM_{2.5}$ includes a mixture of components that can behave independently from one another (*e.g.,* primary vs. secondary particles) or that are related to one another in a complex way (*e.g.,* different secondary particles). Thus, it is appropriate to consider the predicted future concentration of $PM_{2.5}$ to be the sum of the predicted component concentrations. *See* 72 FR 20608. As recommended in EPA's Modeling Guidance, Alabama divided $PM_{2.5}$ into its major components and noted the future effects of already implemented control strategies on each. The effect on $PM_{2.5}$ was estimated as a sum of the effects on individual components. Future $PM_{2.5}$ design values at specified monitoring sites were estimated by adding the future-year values of seven $PM_{2.5}$ components (mass associated with SO_4, NO_3, ammonium (NH_4), OC, elemental carbon (EC), particle-bound water (PBW) and ''other'' primary inorganic particulate matter (crustal) plus passively collected mass). All future site-specific $PM_{2.5}$ design values were below the concentration specified in the NAAQS; therefore, the Chattanooga Area passed the SMAT evaluation. Table 3 illustrates the comparison of the designation design value for 2003 with the future model-predicted 2009 annual design values for the monitors in the nonattainment area. Compliance with the $PM_{2.5}$ annual NAAQS is predicted.

EPA has also developed a software package called Modeled Attainment Test Software (MATS) which will spatially interpolate data, adjust the spatial fields based on model output gradients and multiply the fields by model calculated RRFs. EPA recommended that the State provide MATS attainment test values for 2009, but the tool became available soon after Alabama had drafted its attainment plan. The State did not submit any MATS results in the Chattanooga SIP. However, the final report for the ''Technical Support Document for the Association for Southeastern Integrated Planning (ASIP) Emissions and Air Quality Modeling to Support $PM_{2.5}$ and 8-Hour Ozone State Implementation Plans'' (ASIP Report which is included in the docket) provides 2009 MATS version 1.2.1 results for the entire Chattanooga Area and the entire ASIP/VISTAS modeling domain. As shown in Table 5–1 of this document, MATS also indicates attainment of the annual $PM_{2.5}$ NAAQS in 2009. EPA also reviewed additional regional modeling to support the CMAQ attainment results based on the CAMx model developed and documented in the ASIP Report. Application of the modeled attainment test with the CAMx model also produced future design values in 2009 that were below the annual $PM_{2.5}$ NAAQS. This further supports the State's technical analysis showing that the Chattanooga Area would achieve the 1997 Annual $PM_{2.5}$ NAAQS in 2009.

TABLE 3—2003 ACTUAL AND 2009 MODEL-PREDICTED ANNUAL $PM_{2.5}$ DESIGN VALUES

[$\mu g/m^3$]

Monitor ID	State	County	2003	2009
470654002	TN	Hamilton	15.2	13.6
470650031	TN	Hamilton	16.1	14.4
470651011	TN	Hamilton	14.1	12.3
132950002	GA	Walker	15.5	13.9

EPA Analysis

The modeling system was chosen and simulated by VISTAS to develop a model performance evaluation of the nonattainment area which would provide the necessary assurances that an assessment of future controls demonstrated attainment. Application of the EPA modeled attainment test and the MATS indicated future design values that are less than 15.0 $\mu g/m^3$ and therefore consistent with attainment of the 1997 Annual $PM_{2.5}$ NAAQS. Finally, the Area's monitored status as having timely attained the standard further supports the modeling results.

Current Air Quality Analysis

As noted in section II.D. above, on May 31, 2011, EPA determined that the Chattanooga Area had attaining data for the 1997 Annual $PM_{2.5}$ NAAQS based upon data for the 3-year period 2007–2009, with a design value (*i.e.,* the highest 3-year average of annual mean $PM_{2.5}$ concentrations) of 12.7 $\mu g/m^3$. EPA's review of more recent data shows that the Area also had attaining data for the 3-year period 2008–2010, with a design value of 11.1 $\mu g/m^3$. These data, which have been quality-assured, certified, and recorded in EPA's AQS, are summarized in Table 4 below. In addition, monitoring data thus far available, but not yet certified, in the AQS database for 2011 show that this Area continues to meet the 1997 Annual $PM_{2.5}$ NAAQS. While the data that shows the Chattanooga Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline, as well as the more recent data, are impacted by CAIR, as described above in section II.C. of this notice, CAIR was enforceable though the attainment year, and EPA's modeling analysis for the Transport Rule demonstrates that the Chattanooga Area would be able to attain the 1997 Annual $PM_{2.5}$ NAAQS even in the absence of CAIR or the Transport Rule. Further, the continuing decrease in $PM_{2.5}$ concentrations in the Area also supports Alabama's determination that current emission control measures on sources were sufficient to bring the Chattanooga Area into attainment by no later than the required attainment date of April 5, 2010.

TABLE 4—2007–2009 ANNUAL AVERAGE CONCENTRATIONS IN THE CHATTANOOGA AREA

Site name	County	Site No.	Design values (average of three consecutive annual average concentrations) (μg/m^3)			
			2008	2009	2010	2011*
Siskin Drive	Hamilton, TN	47–065–4002	14.3	12.7	11.6	11.1
Tombras Avenue	Hamilton, TN	47–065–0031	14.0	12.6	11.6	11.2
Soddy-Daisy High School	Hamilton, TN	47–065–1011	13.0	11.7	11.4	11.0
Rossville	Walker, GA	13–295–0002	13.5	12.3	10.7	10.1

*Monitoring data for 2011 are available but not yet certified in the AQS database.

4. Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT)

a. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' EPA interprets RACM, including RACT, under section 172 as measures that a state finds are both reasonably available and contribute to attainment as expeditiously as practicable in the nonattainment area. Thus, what constitutes RACM or RACT in a specific $PM_{2.5}$ nonattainment area is closely tied to the expeditious attainment demonstration of the plan. *See* 40 CFR 51.1010; 72 FR 20586, 20612 (April 25, 2007).

States are required to evaluate RACM/RACT for direct $PM_{2.5}$ emissions and all of the area's attainment plan precursors. *See* 40 CFR 51.1002(c); 72 FR 20586, 20589–97. The state must address SO_2 as a $PM_{2.5}$ attainment plan precursor and evaluate sources of SO_2 emissions in the state for control measures. The state must address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate sources of NO_X emissions in the state for control measures, unless the state and EPA provide an appropriate technical demonstration for a specific area showing that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area. Also, because EPA concluded that VOC and ammonia are presumptively not regulatory precursors for $PM_{2.5}$, the state is not required to evaluate RACM/RACT for sources of VOC or ammonia unless there is a determination by either the state or EPA supported by an appropriate demonstration that such emissions need to be regulated for expeditious attainment of the NAAQS in the specific area.

For $PM_{2.5}$ attainment plans, the $PM_{2.5}$ Implementation Rule requires a combined approach to RACM and RACT under subpart 1 of Part D of the CAA (''Plan Requirements for Nonattainment Areas/Nonattainment Areas in General''). Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technique documents or guidelines and does not identify specific source categories for state and EPA evaluation during attainment plan development. *See* 72 FR 20586, 20610. Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation consistent with the section 172(c)(1) definition. Because the variable nature of the $PM_{2.5}$ problem in different nonattainment areas may require states to develop attainment plans that address widely disparate circumstances, EPA determined not only that states should have flexibility with respect to RACM/RACT controls consistent with the statute but also that in areas needing significant emission reductions RACM/RACT controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. *See* 72 FR 20586, 20612 and 20615. Thus, under the $PM_{2.5}$ Implementation Rule, RACT and RACM are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. *See* 40 CFR 51.1010; 72 FR 20586, 20612.

The $PM_{2.5}$ Implementation Rule requires that attainment plans include the list of measures that a state considered and information sufficient to show that the state met all requirements for the determination of what constitutes RACM/RACT in a specific nonattainment area. *See* 40 CFR 51.1010(a). In addition, the rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and to adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. If a measure or measures is not necessary for expeditious attainment of the NAAQS in the area, then by definition that measure is not RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS in that area. Any measures that are necessary to meet these requirements which are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. *See* 72 FR 20586, 20614.

Guidance provided in the $PM_{2.5}$ Implementation Rule for evaluating RACM/RACT level controls for an area also indicates that there could be flexibility with respect to those areas that were predicted to attain the 1997 $PM_{2.5}$ NAAQS within five years of designation as a result of existing national or local measures, *i.e.,* by April 2010 based upon monitoring data from 2007, 2008, and 2009. *See* 72 FR 20586, 20612. In such circumstances, EPA indicated that the state may conduct a more limited RACM/RACT analysis that does not involve additional air quality modeling. Moreover, the RACM/RACT analysis for such an area could focus on a review of reasonably available measures, the estimation of potential emissions reductions, and the evaluation of the time needed to implement the measures. Thus, the $PM_{2.5}$ Implementation Rule guidance recommends that an analysis for those areas expected to attain within five years of designation as a nonattainment area for the 1997 $PM_{2.5}$ NAAQS may be less rigorous than for areas expected to attain later.

A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the preamble to the $PM_{2.5}$ Implementation Rule. 72 FR 20586, 20609–20633.

b. Alabama's Analysis of Pollutants and Sources for Jackson County

Alabama's analysis appears in chapter 6 of the October 7, 2009, attainment plan submission. The State determined that controls on sources of VOC and sources of ammonia would not be necessary for expeditious attainment of the NAAQS in this area. Thus, the State determined that control of $PM_{2.5}$, SO_2, and NO_X, are appropriate in the Chattanooga Area for purposes of attaining the 1997 $PM_{2.5}$ NAAQS. EPA preliminarily agrees that Alabama's determination is supported by its analysis. The State's determination with respect to which pollutants the plan should evaluate is discussed in chapter 5 of the submittal.

The Alabama portion of the Chattanooga Area is limited to one census block in Jackson County described by U.S. Census 2000 block group identifier 01–071–9503–1. As indicated in Chapter 6 of the Technical Support Document for the air quality designations promulgated by EPA on January 5, 2005, this census block was included in the Chattanooga nonattainment area to encompass the Tennessee Valley Authority's (TVA's) Widows Creek power plant, which EPA determined to be contributing to violations of the 1997 Annual $PM_{2.5}$ NAAQS at monitors in the nearby Tennessee and Georgia portions of the Chattanooga Area.

c. Alabama's Evaluation of RACM/RACT Control Measures for Jackson County

As was noted earlier, EPA included U.S. Census block 01–071–9503–1, in Jackson County, as part of the Chattanooga Area primarily because of emissions from the TVA Widows Creek power plant. For this reason, Alabama's consideration of RACM/RACT control measures for the Area focused on the Widows Creek facility. Alabama's RACM/RACT analysis is provided in Chapter 6 of the State's October 7, 2009, submittal. The Widows Creek facility has a title V permit which includes requirements to operate certain control devices, as well as key emission limits. The facility was also included as part of the 2011 systemwide settlement with EPA which resulted in additional requirements for the facility that either will be or are already included into the title V permit to ensure they are permanent and enforceable. *See, e.g., http://www.epa.gov/compliance/resources/agreements/caa/tva-ffca.pdf.*

As identified in the submittal, TVA Widows Creek has two base load units, Units 07 and 08, with rated capacities of 575 megawatts (MW) and 550 MW, respectively. The facility also has six smaller units, Units 01 through 06, which are peaking units with rated capacities of 141 MW each. The attainment year emissions for these units are shown in Table 5 below.

TABLE 5—ATTAINMENT YEAR (2009) ACTUAL EMISSIONS FROM UTILITY EGUS IN THE ALABAMA PORTION OF THE CHATTANOOGA AREA [3]

Unit	NO_X (tpy)	SO_2 (tpy)	$PM_{2.5}$* (tpy)
01	248.5	599.3	59.9
02	274.5	686.1	68.8
03	109.2	250.0	25.9
04	411.6	1022.0	102.1
05	182.0	433.6	48.9
06	893.8	2564.1	272.2
07	934.7	5368.1	266.6
08	472.1	1938.3	348.4

*The $PM_{2.5}$ values are a total of the filterable and condensable components.

Alabama reviewed the control equipment installed on the EGUs at the TVA Widows Creek power plant and provided the following information in the summary of the State's analysis. Control of NO_X emissions is achieved by selective catalytic reduction (SCR) controls, which were installed on Units 07 and 08 in 2003 and 2004, respectively. Control of SO_2 emissions is achieved by flue gas desulfurization (FGD) controls, which were installed on Units 07 and 08 in 1984 and 1977, respectively. Control of direct $PM_{2.5}$ emissions is achieved by electrostatic precipitator (ESP) controls on Units 01 through 07 and by FGD on Unit 08. The submittal states that the FGD installed on Unit 08 was upgraded in efficiency in 2004. Alabama concluded that these controls, and other associated requirements such as emission limits, were sufficient to comply with RACM/RACT requirements and that no further controls were needed at the facility to demonstrate timely attainment. EPA also evaluated the Widows Creek controls, and a summary of that evaluation follows the discussion below.

While Alabama did analyze existing controls at the TVA Widows Creek power plant for the purpose of its RACM/RACT evaluation, EPA disagrees with Alabama's conclusion that ''CAIR equals RACT'' for several reasons. These reasons are outlined below although it is not necessary for EPA to agree with Alabama's determination on that issue in order to approve the Jackson County attainment plan. In the preamble to the final $PM_{2.5}$ Implementation Rule, EPA indicated that in states that fulfill their CAIR SO_2 emission reduction requirements entirely through EGU emission reductions, compliance by EGU sources with an EPA-approved CAIR SIP or a CAIR FIP could be presumed to satisfy the SO_2 RACT/RACM requirements. 72 FR 20586 at 20623. EPA also established a similar rebuttable presumption with respect to NO_X RACT/RACM for EGUs. *Id.* at 20623–24. EPA did not make any determination regarding whether RACT/RACM requirements for any particular nonattainment area were, in fact, satisfied by CAIR, but only established a presumption that could be rebutted by data demonstrating that CAIR was not sufficient to satisfy RACT/RACM with respect to a particular nonattainment area. EPA did not present technical analysis to support this presumption. Subsequent to the publication of that preamble language, the D.C. Circuit issued a decision in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009) holding, among other things, that EPA's similar determination, in the ozone implementation rule, that compliance with the NO_X SIP Call satisfied RACT for EGUs was unlawful because it was not supported by a technical demonstration showing that the NO_X SIP Call would in fact achieve greater reductions than source-by-source RACT within the nonattainment areas. Because the presumption established by EPA in the $PM_{2.5}$ Implementation Rule was similar, in that it was supported by reasoning but not by a technical analysis, approving a state RACT/RACM determination based on the ''CAIR equals RACT'' presumption would be inconsistent with the court's ruling in *NRDC* v. *EPA.* In addition, EPA received a petition for reconsideration in June of 2007 that explicitly called into question the basis for the presumption on both procedural and substantive grounds. In light of the arguments raised in that petition for reconsideration, and in light of the aforementioned court decision, EPA has granted the petition for reconsideration on this issue and intends to initiate rulemaking to propose changes to this aspect of the guidance for the $PM_{2.5}$ Implementation Rule. Third, CAIR itself was remanded to EPA by the U.S. Court of Appeals for the D.C. Circuit, *North Carolina* v. *EPA,* 531 F.3d 896, *as amended by* 550 F.3d 1178 (D.C. Cir. 2008). While the court found serious flaws in the rule, it decided to leave CAIR in place while EPA worked on a rule to replace it. *Id.*

[3] Table 5 shows actual emissions data obtained from EPA's National Emission Inventory, which is available at *http://www.epa.gov/ttn/chief/.*

As mentioned above, in August 2011, EPA published in the **Federal Register** a rule to replace CAIR—the Transport Rule, also known as the Cross-State Air Pollution Rule. 76 FR 48208. EPA did not address whether compliance with the Transport Rule could, in any circumstances, satisfy any RACM/RACT requirements for any sources. The Transport Rule was subsequently stayed pending judicial review. In the order staying the Transport Rule, the court also instructed EPA to continue implementing CAIR while the Transport Rule is stayed. Thus, while CAIR currently remains in place, it is in place only temporarily and thus could not be said to satisfy the RACM/RACT requirement on a permanent basis.

As a result, the RACM/RACT analysis for EGUs must include an actual evaluation of the level of emission controls on any sources located within the nonattainment area to establish that, either individually or as a category, these sources are controlled to the degree necessary to meet the RACM/RACT level of control for the area. Given that the State developed and submitted the attainment plan before the legitimacy of the presumption in the guidance for the $PM_{2.5}$ Implementation Rule was called into question, EPA is independently evaluating these sources as part of acting on the attainment plan rather than relying on the statement in the SIP submittal concerning CAIR and RACT. EPA believes that if its review of the level of SO_2 and NO_X emission controls on these sources confirms that the State's SIP already requires controls to the degree necessary to provide for expeditious attainment of the NAAQS in the area, then EPA may conclude that the sources are adequately controlled to meet the RACM/RACT requirement. In other words, so long as an actual evaluation of the EGU sources in the area demonstrates that there is a RACM/RACT level of controls, then EPA may approve the attainment plan notwithstanding the State's prior reliance on the presumption. EPA has also concluded that if the area is now attaining the 1997 $PM_{2.5}$ NAAQS, then this is prima facia evidence that under section 172 the level of control on the EGU sources that produced the attaining level of emissions would constitute RACM/RACT for purposes of the State's attainment plan for these NAAQS. EPA notes, however, that what constitutes RACM/RACT for the 1997 $PM_{2.5}$ NAAQS would not necessarily constitute RACM/RACT for other NAAQS because the determination of RACM/RACT under CAA section 172 is dependent on the attainment needs of the area.

Because the Alabama submittal relies in part on the rebuttable presumption articulated in the $PM_{2.5}$ Implementation Rule that ''CAIR equals RACT'' for utility EGUs—a presumption that EPA cannot rely on for reasons explained above—EPA has evaluated the EGUs at TVA Widows Creek for the purposes of RACM/RACT. EPA notes that Widows Creek facility is subject to a Federal Facilities Compliance Agreement (FFCA) between EPA and TVA (*http://www.epa.gov/compliance/resources/agreements/caa/tva-ffca.pdf*) and a Consent Decree between four states, three non-governmental organizations and TVA, entered with the United States District Court Eastern District of Tennessee at Knoxville (*Alabama et al.* v. *Tennessee Valley Auth.,* No. 3:11–cv–00170 and 171 (consolidated); available at *http://www.epa.gov/compliance/resources/decrees/civil/caa/tvacoal-fired-cd.pdf*). According to the FFCA and the Consent Decree, Widows Creek Units 07 and 08 must operate their SCR, FGD and ESP controls continuously while the emission units are in operation. In addition, the six peaking units are scheduled to be retired under the FFCA and the Consent Decree, two each in 2013, 2014, and 2015. This legal requirement for the current level of controls on the EGU sources ensures that the level of controls which enabled the Area to attain the standard will remain federally enforceable.

The Widows Creek facility is also subject to emission limits applicable to the facility. As described in the facility's title V operating permit,[4] Units 01 through 08 at are each subject to a particulate matter (PM) emission limit of 0.12 pounds per million British thermal units (lb/MMBtu) heat input and a NO_X averaging plan as provided in the facility's Acid Rain permit, which is included in the title V permit. Units 01 through 06 are subject to a combined SO_2 limit of 1.6 lb/MMBtu heat input and opacity limit of 20 percent, and Units 07 and 08 at are each subject to an SO_2 limit of 0.9 lb/MMBtu heat input and an opacity limit of 20 percent.

One other significant source of PM, SO_2 and NO_X emissions, RockTenn CP, LLP (formerly Smurfit-Stone Container Corporation), Stevenson Mill, exists within the Alabama portion of the Chattanooga nonattainment area. Alabama did not evaluate this pulp and paper manufacturing facility in its RACM/RACT analysis. However, as with EPA's evaluation of RACM/RACT for EGUs, EPA has concluded that if the area is now attaining the 1997 $PM_{2.5}$ NAAQS, then this is prima facia evidence that under section 172 the level of control on the sources that produced the attaining level of emissions would constitute RACM/RACT for purposes of the State's attainment plan for these NAAQS. As described in RockTenn CP, LLP, Stevenson Mill's title V operating permit,[5] the following emission units and controls were in place at the facility to meet various applicable emission limits for PM, SO_2 and NO_X at the time that the Chattanooga Area achieved attainment:

- The Number 1 Power Boiler is controlled by a combination venturi-spin vane absorber and wet ESP-advance membrane up-flow system to meet SIP emission limits for PM and opacity and a Prevention of Significant Deterioration (PSD) Best Available Control Technology (BACT) emission limit for SO_2.
- The Number 2 Power Boiler is controlled by a combination venturi-spin vane absorber and wet ESP-advance membrane up-flow system to meet New Source Performance Standard (NSPS) limits and PSD/BACT limits for SO_2, PM, opacity, and NO_X.
- The Number 1 Wood Fired Boiler is controlled by mechanical dust collectors, a wet multiple-element variable throat venture scrubber, and a polishing wet ESP to meet NSPS limits and PSD/BACT limits for SO_2, PM, opacity, and NO_X.
- The Number 2 Wood Fired Boiler is controlled by a multicyclone and a dry ESP to meet NSPS limits and PSD/BACT limits for SO_2, PM, and NO_X and a state operating permit limit for opacity.
- The Chemical Recovery System (CRS) is controlled by both a dry and a wet ESP to meet PSD/BACT limits for PM. SO_2 emissions from the CRS are monitored with a continuous emission monitoring system to assure compliance with NSPS limits and PSD/BACT limits. The CRS is also subject to PSD/BACT limits for NO_X and a SIP limit for opacity.

d. Proposed Action on RACM/RACT Demonstration and Control Strategy

EPA is proposing to approve Alabama's conclusion that the existing controls on emissions of $PM_{2.5}$, SO_2, and

[4] Major source operating permit and Statement of Basis issued by ADEM to the TVA Widows Creek Fossil Plant, Permit No. 705–0008, December 29, 2003.

[5] Major source operating permit and Statement of Basis issued by ADEM to Smurfit-Stone Container Corporation, Stevenson Mill, Permit No. 705–0014, October 6, 2010 (revised June 30, 2011, to change name to RockTenn CP, LLP).

NO_X at the Widows Creek facility constitute RACM/RACT for that source in the Alabama portion of the Chattanooga Area based on our analysis described above. Further, as summarized above, EPA proposes that no further controls would be required at the RockTenn facility and that existing controls there are sufficient for RACM/RACT purposes for this Area, at this time. As noted above, the most current monitoring data for this Area indicates that it is attaining the 1997 Annual $PM_{2.5}$ NAAQS. In addition, EPA has already made a clean data determination and a finding of attaining data for this Area confirming that it met the NAAQS by its attainment date. *See* 76 FR 55774, September 8, 2011. EPA's guidance for the $PM_{2.5}$ Implementation Rule recommends that if an area is predicted through the attainment plan to attain the standards within five years after designation, then the state may submit a more limited RACM/RACT analysis and the state could elect not to do additional modeling.

In light of the fact that the Chattanooga Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the State's projected attainment date, and that at this point in time no additional measures could be adopted to attain one year sooner, EPA proposes to conclude that the attainment plan meets the RACM/RACT requirements of the $PM_{2.5}$ Implementation Rule and that the level of control in the State's attainment plan constitutes RACM/RACT for purposes of the 1997 Annual $PM_{2.5}$ NAAQS. Because the $PM_{2.5}$ Implementation Rule defines RACM/RACT as that level of control that is necessary to bring an area into timely attainment, and that no additional measures could achieve attainment one year earlier, the current level of federally enforceable controls on sources located within the Area is by definition RACM/RACT for this Area for this purpose.

Our proposed approval is based upon the determination that these emission controls are in place and are, in part, the reason for the attainment of the 1997 Annual $PM_{2.5}$ NAAQS in the Chattanooga Area. By approving these control measures as RACM/RACT for both sources for purposes of Alabama's attainment plan, these control measures will become permanent and enforceable SIP measures to meet the requirements of the CAA and the $PM_{2.5}$ Implementation Rule for purposes of the 1997 Annual $PM_{2.5}$ NAAQS.

5. Reasonable Further Progress

Section 172(c)(2) of the CAA and the $PM_{2.5}$ Implementation Rule require that attainment plans include a demonstration that reasonable further progress toward meeting air quality standards will be achieved through generally linear incremental improvement in air quality. For the 1997 $PM_{2.5}$ NAAQS, a state is required to submit a separate RFP plan for any area for which the state seeks an extension of the attainment date beyond 2010. The $PM_{2.5}$ Implementation Rule set forth that an area that demonstrates attainment within five years of the date of designation will be considered to have satisfied the RFP requirement and is not required to submit a separate RFP plan. *See* 40 CFR 51.1009(b). The Alabama attainment plan submittal for the Chattanooga Area by demonstrated that the Area would attain the 1997 Annual $PM_{2.5}$ NAAQS by the April 5, 2010, attainment date. Accordingly, the State was not required under the $PM_{2.5}$ Implementation Rule to develop a specific RFP component of the attainment plan for this Area. We therefore propose to approve the State's attainment plan with respect to the RFP requirement.

6. Contingency Measures

In accordance with section 172(c)(9) of the CAA, the $PM_{2.5}$ Implementation Rule requires that $PM_{2.5}$ attainment plans include contingency measures. *See* 40 CFR 51.1012 and 72 FR at 20642–20646, April 25, 2007. Contingency measures are additional measures to be implemented in the event that an area fails to meet RFP or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP or fails to attain by its attainment date and should contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy for attaining the standard and should provide for emission reductions equivalent to one year of RFP.

The Alabama attainment plan describes the contingency measures for the Chattanooga Area as being comprised of Georgia Rules for Air Quality Control Chapter 391–3–1 Rule (sss) ''Multipollutant Control of Electric Steam Generating Units.'' This rule requires additional controls on power plants in Georgia after the end of 2008, resulting in SO_2 and NO_X emission reductions that were not required for demonstrating attainment of the annual $PM_{2.5}$ NAAQS. However, as noted in section II.C. of this proposed rulemaking, EPA made a determination, based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 monitoring period, that the Chattanooga Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Because EPA has determined, in accordance with CAA 179(c)(1), that the Area attained by its applicable deadline, no contingency measures for failure to attain by this date need to be implemented, and EPA action with respect to contingency measures is unnecessary and would be futile and without purpose. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. Because EPA has determined that the Area has attained by the attainment date, the contingency measures submitted by Alabama are no longer necessary for the Chattanooga Area to meet RFP requirements or to attain the annual $PM_{2.5}$ NAAQS by the attainment date.

7. Attainment Date

Alabama provided a demonstration of attainment of the 1997 Annual $PM_{2.5}$ NAAQS in the Chattanooga Area by no later than five years after the Area was designated nonattainment. In accordance with the $PM_{2.5}$ Implementation Rule, areas such as this, demonstrating that they will attain the standard by April 5, 2010, attainment deadline, are considered to have satisfied the requirement to show RFP toward attainment and need not submit a separate RFP plan. For similar reasons, such areas are also not subject under the Implementation Rule to a requirement for a mid-course review. Given that monitoring data confirm that the Chattanooga Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the date that the State anticipated in its attainment plan, that EPA has already made an attainment determination, and that the Area continues to attain those NAAQS, EPA is proposing to approve the State's attainment date.

B. Insignificance Determination for the Mobile Source Contribution to $PM_{2.5}$ and NO_X Emissions

The CAA requires federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. *See, e.g.,* CAA section 176. This means that such actions will not cause or contribute to violations of a NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone. Actions

involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their metropolitan transportation plans and transportation improvement programs (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEB) contained in a SIP.

For MVEB to be approvable, they must meet, at a minimum, EPA's adequacy criteria found at 40 CFR 93.118(e)(4). In certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including the percentage of motor vehicle emissions in context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004.[6] Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII.B. Areas with Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review of EPA is subject to the budget adequacy and approval process for EPA's action on the SIP.

EPA made an insignificance finding through the transportation conformity adequacy process for NO_X and directly emitted $PM_{2.5}$ for the Alabama portion of the Chattanooga $PM_{2.5}$ nonattainment area on June 18, 2010 (75 FR 34734). As a result of EPA's insignificance finding, the Alabama portion of the Chattanooga Area was no longer required to perform regional emissions analyses for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 Annual $PM_{2.5}$ NAAQS until such time that EPA reviewed and took action on the Chattanooga Area's attainment plan (the subject of today's proposed action). EPA's June 18, 2010, insignificance finding for directly emitted $PM_{2.5}$ and NO_X through the adequacy process (effective on July 6, 2010) only relates to the Alabama portion of the tri-state Chattanooga Area.

When EPA makes an insignificance determination through the adequacy process for transportation conformity, EPA notes that such an adequacy determination does not imply that an insignificance determination in the SIP (*i.e.,* in this case the attainment plan) will ultimately be approved. In this case, consistent with EPA's adequacy review of Alabama's October 7, 2009, attainment plan and the Agency's subsequent thorough review of the entire SIP submission, EPA is proposing to approve Alabama's insignificance determination for the mobile source contribution of NO_X and $PM_{2.5}$ emissions to the overall $PM_{2.5}$ emissions in the Chattanooga Area. EPA preliminarily determined that Alabama's SIP submittal meets the criteria in the transportation conformity rules for an insignificance finding for both NO_X and $PM_{2.5}$ contribution from motor vehicles in the Alabama portion of the Chattanooga Area. That is, EPA has preliminarily determined that the SIP submittal demonstrates that, for NO_X and $PM_{2.5}$, regional motor vehicle emissions are an insignificant contributor to the annual $PM_{2.5}$ concentrations in the Alabama portion of the Area. This preliminary finding is based on the following factors:

- Tables 10.1.1–1 and 10.1.1–2 of Alabama's submittal demonstrate that the on-road NO_X and $PM_{2.5}$ emissions in 2009 for the Alabama portion of the Area are less than 1 percent, each, of the total emissions for the Alabama portion of the Area.
- There have been no SIP requirements for motor vehicles control measures for the Alabama portion of the Area.
- According to the Chattanooga Area MPO's analysis, the projected mobile source emissions to 2035 indicate that there is no reason to expect highway motor vehicle growth that would cause a violation of the 1997 Annual $PM_{2.5}$ NAAQS.
- As described above, the Area has attained the 1997 Annual $PM_{2.5}$ standard and EPA is proposing to approve the attainment plan for the Alabama portion of the Area.

As discussed above, the Area is not currently required to perform a regional emissions analysis for the Alabama portion of the Chattanooga Area based on the adequacy determination for the finding that on-road emissions of NO_X and direct $PM_{2.5}$ are insignificant contributors to the Area's $PM_{2.5}$ air quality problem. Today, EPA is proposing to approve that insignificance finding as part of the State's attainment plan for the Area. If finalized, such approval would serve to confirm that the Alabama portion of the Area is not required to perform a regional emissions analysis for either directly emitted $PM_{2.5}$ or NO_X as a part of future $PM_{2.5}$ conformity determinations for the 1997 Annual $PM_{2.5}$ standard.[7] $PM_{2.5}$ hot-spot analysis will continue to apply for required projects under 40 CFR 93.116 and 93.123(b) of the Transportation Conformity Rule.

Weighing all the factors for an insignificance finding, particularly the minor contribution of mobile source NO_X and $PM_{2.5}$, EPA has determined that the NO_X and $PM_{2.5}$ contribution from motor vehicle emissions to the Annual $PM_{2.5}$ pollution problem for the Alabama portion of the Area are insignificant. If finalized, EPA's insignificance finding should be considered and specifically noted in the transportation conformity documentation that is prepared for this Area.

The insignificance determination that Alabama submitted for the Chattanooga Area was developed with projected mobile source emissions derived using the MOBILE6 motor vehicle emissions model. EPA is proposing to approve the inventory and the insignificance determination because this model was the most current model available at the time Alabama was performing its analysis. However, EPA has now issued an updated motor vehicle emissions model known as Motor Vehicle Emission Simulator or MOVES. In its

[6] Since the July 1, 2004, revision, 40 CFR 93.109 was revised on March 24, 2010, because of the Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments update. In the 2004 preamble and rule, the insignificance determinations were outlined in 40 CFR 93.109(k). Due to renumbering of this section in a 2012 final rulemaking, the provisions for insignificance determinations are now located at 40 CFR 93.109(f).

[7] If Alabama submits a redesignation request and maintenance plan for its portion of the tri-state Chattanooga TN GA AL $PM_{2.5}$ nonattainment area and believes that on-road emissions of NO_X and direct $PM_{2.5}$ remain insignificant during the maintenance period, the maintenance plan will need to include information to support a finding that on-road emissions of NO_X and direct $PM_{2.5}$ continue to be insignificant during the maintenance period. The insignificance finding for the attainment demonstration does not automatically continue to apply to the future maintenance plan.

announcement of this model, EPA established a two-year grace period for continued use of MOBILE6 in regional emissions analyses for transportation plan and TIP conformity determinations (extending to March 2, 2012),[8] after which states (other than California) must use MOVES in conformity determinations for TIPs. As stated above MOBILE6.2 was the applicable mobile source emissions model that was available when this SIP was submitted. EPA's ''Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' (*http://www.epa.gov/otaq/models/moves/documents/420b12010.pdf*) explains that the Clean Air Act does not require states that have already submitted SIPs to revise these SIPs simply because a new motor vehicle emissions model is now available. The guidance further states that the use of MOBILE6.2 in an already submitted SIP should not be an obstacle to approval of that SIP assuming that it is otherwise approvable because it would be unreasonable to require revision to a SIP which in this case was submitted prior to the release of MOVES. In this instance the on-road emissions of NO_X and $PM_{2.5}$ represent such a small percentage of the inventory in the Alabama portion of the Area (less than 1 percent of the total inventory) that recalculating the on-road emissions with MOVES would not result in a change in the proposed conclusion that on-road emissions meet the insignificance criteria in the transportation conformity rule. 40 CFR 93.109(f).

V. Proposed Action

EPA is proposing to approve Alabama's annual $PM_{2.5}$ attainment plan for the Alabama portion of the Chattanooga Area. EPA has preliminarily determined that the SIP meets applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA is proposing to approve Alabama's attainment demonstration, including the RACM/RACT analysis; RFP analysis; and, for transportation conformity purposes, an insignificance determination for $PM_{2.5}$ and NO_X for the mobile source contribution to ambient $PM_{2.5}$ levels for the State's portion of the Chattanooga Area. The requirement for a RFP plan is satisfied because Alabama demonstrated attainment of the 1997 $PM_{2.5}$ NAAQS in the Area by April 5, 2010. Also, because EPA has previously determined that the Area has attained by the attainment date, the contingency measures submitted by Alabama are no longer necessary for the Chattanooga Area to meet RFP requirements or to attain the 1997 Annual $PM_{2.5}$ NAAQS by the attainment date.

VI. 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 proposed 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 proposed 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, October 7, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: June 21, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–16959 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

[8] EPA recently extended the grace period to use MOVES for regional emissions analysis in conformity determinations to March 2, 2013 (77 FR 11394).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R09–OAR–2012–0286; FRL–9698–6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; Gila River Indian Community

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act as amended in 1990, EPA is proposing to grant delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Gila River Indian Community Department of Environmental Quality in Arizona.

DATES: Any comments on this proposal must arrive by August 13, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0286, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (AIR–4), U.S. Environmental Protection

Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *kay.rynda@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns the delegation of unchanged NESHAP to the Gila River Indian Community Department of Environmental Quality (GRIC) in Arizona. In the Rules section of this **Federal Register**, EPA is granting GRIC the authority to implement and enforce specified NESHAP. The direct final rule also explains the procedure for future delegation of NESHAP to GRIC. EPA is taking direct final action without prior proposal because the Agency believes this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 22, 2012.

Elizabeth Adams,

Acting Director, Air Division, Region IX.

[FR Doc. 2012–17030 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0053: 4500030114]

RIN 1018–AX43

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for the Southwestern Willow Flycatcher

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 public comment period on the August 15, 2011, proposed designation of revised critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties an opportunity to comment on our amended required determinations and revisions to the proposed revised designation, which include additional areas as proposed critical habitat on two streams within the Santa Cruz Management Unit, Arizona, and revisions to areas being considered for exclusion under section 4(b)(2) of the Act. We are accepting comments on the draft environmental assessment prepared in compliance with the National Environmental Policy Act (NEPA) and the draft economic analysis associated with the proposed rule. We are also providing notice of a public informational session and hearing (see **DATES** and **ADDRESSES**). Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written comments:* We will consider comments received on or before September 10, 2012. 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.

Public informational session and public hearing: We will hold a public hearing on August 16, 2012, in San Carlos, AZ (see **ADDRESSES**). The hearing is open to all who wish to provide formal, oral comments regarding the proposed rule, and will be held from 6:30 p.m. to 8:00 p.m., with an informational session before the hearing from 3:00 p.m. to 4:30 p.m. During the informational session, Service employees will be available to provide information and answer questions.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0053 or by mail from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2011–0053, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2011–0053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

Public informational session and public hearing: The public informational session and hearing will be held at Apache Gold Convention Center, Highway 70, 5 miles East of Globe, in San Carlos, AZ 85550. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Steve

Spangle, Field Supervisor, Arizona Ecological Services Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021; telephone 602–242–0201; facsimile 602–242–0513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of revised flycatcher critical habitat that was published in the **Federal Register** on August 15, 2011 (76 FR 50542). We are accepting comments regarding additional areas we are proposing as critical habitat in this document and other areas that we are considering for exclusion under section 4(b)(2) of the Act (16 U.S.C. 1531 *et seq.*), as discussed in this document. We are also accepting comments on the amended required determinations section, the draft economic analysis, and the draft environmental assessment prepared in compliance with NEPA (42 U.S.C. 4321 *et seq.*). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the flycatcher;

(b) The amount and distribution of flycatcher habitat;

(c) What areas that were occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why;

(d) What areas not occupied at the time of listing that meet our criteria as being essential for the conservation of the species should be included in the designation and why;

(e) Special management considerations or protection that may be needed for the physical or biological features essential to the conservation of the species in the critical habitat areas we are proposing, including managing for the potential effects of climate change;

(f) Stream segments, many of which are highlighted in the Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002) and included in this proposed rule, that are not now known to have flycatcher nesting territories or known to only have few nesting flycatchers that may be capable of being improved for flycatcher recovery purposes. We specifically seek information about streams within the Amargosa, Salton, Mohave, Powell, San Juan, Santa Cruz, and Hassayampa and Agua Fria Management Units. Please provide information on flycatcher distribution and abundance, habitat quality, habitat locations, habitat improvement projects, management actions needed to improve habitat, habitat quality limitations, habitat recovery potential, and any other flycatcher or flycatcher-habitat-specific information, and;

(g) Flycatcher habitat suitability for recovery in areas within the Santa Ana and San Diego Management Units in southern California, specifically in the following areas: (1) Entirety of Temescal Wash including Alberhill Creek in Riverside County; (2) entirety of Murrieta Creek in Riverside County; (3) Potrero Creek near the city of Beaumont in Riverside County; (4) Cajon Creek from Lone Pine Canyon to California State Highway 138 in San Bernardino County; and (5) Tijuana River from Dairy Mart Road to the Tijuana River Estuary in San Diego County.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the flycatcher, the features essential to its conservation, and the areas proposed as revised critical habitat.

(5) Any probable economic, national security, environmental, cultural, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information concerning any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

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

(a) For specific lands that we should consider for exclusion under section 4(b)(2) of the Act, please provide us management plans, conservation easements, agreements, habitat conservation plans (HCPs), or other appropriate information, which describe the commitment and assurances of protection of the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat;

(b) For lands we evaluated and excluded from critical habitat under section 4(b)(2) of the Act in our 2005 flycatcher critical habitat designation (70 FR 60886, October 19, 2005) and lands to be newly considered for exclusion in this revision to designated critical habitat, please resubmit your request. In addition to your request, please include any updated information that pertains to the commitment and assurances of protection of flycatcher habitat; the physical or biological features of flycatcher critical habitat; property boundaries; flycatcher status, distribution, and abundance; and management actions to protect the physical or biological features of flycatcher habitat. Include the specific results of implementing these management plans since our 2005 flycatcher critical habitat designation; and

(c) Information concerning the benefits of excluding or retaining lands we identify in the proposed critical habitat rule and revisions herein under consideration for exclusion under section 4(b)(2) of the Act. We specifically seek information about the possible exclusion of Elephant Butte Reservoir; areas within the operating pool of the reservoir may be subject to exclusion under 4(b)(2) of the Act if we determine that the benefits of excluding the area due to potential impacts to water operations outweigh the benefits to the subspecies of including the area as critical habitat.

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

(8) Information on the extent to which the description of economic impacts in the draft environmental analysis is complete and accurate.

(9) The likelihood of adverse social reactions to the designation of critical

habitat, as discussed in the draft environmental assessment, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed revised critical habitat designation.

(10) Information on the extent to which the description and evaluation of the proposal included in the draft environmental assessment is complete and accurate.

If you submitted comments or information on the proposed revised rule (76 FR 50542) from August 15, 2011, to October 14, 2011, or since the initial comment period ended, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments, oral comments received during the public hearing, and any additional information we receive during both comment periods and the time between each comment period.

You may submit your comments and materials concerning the proposed revised rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0053, or by appointment, during normal business hours, at the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0053, or by mail from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat for the flycatcher in this document. For more information on previous Federal actions concerning the flycatcher, refer to the proposed designation of revised critical habitat published in the **Federal Register** on August 15, 2011 (76 FR 50542). Background information on the flycatcher can be found in the 2005 final flycatcher critical habitat rule published in the **Federal Register** on October 19, 2005 (70 FR 60886); our October 12, 2004, proposed critical habitat rule (69 FR 60706); the Recovery Plan; our first flycatcher critical habitat designation, published July 22, 1997 (62 FR 39129), and corrected on August 20, 1997 (62 FR 44228); the final flycatcher listing rule (60 FR 10694, February 27, 1995); and other documents described and cited in the August 15, 2011, flycatcher critical habitat proposal (76 FR 50542). Other reports can be retrieved from the U.S. Geological Survey's (USGS) flycatcher site at *http://sbsc.wr.usgs.gov/cprs/research/projects/swwf.* No new literature is being cited within this document. The current 2005 critical habitat rule remains in effect while this rulemaking process proceeds. For more information on this revised flycatcher critical habitat proposal, please go online to *http://www.regulations.gov* (at Docket No. FWS–R2–ES–2011–0053) or *http://www.fws.gov/southwest/es/arizona/.* All references cited in the August 15, 2011, flycatcher critical habitat revision proposal (76 FR 50542) can be retrieved from these Web sites. You can also contact the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The flycatcher was listed as endangered on February 27, 1995 (60 FR 10694). On July 22, 1997, we published a final critical habitat designation for the flycatcher along 964 stream kilometers (km) (599 stream miles (mi)) in Arizona, California, and New Mexico (62 FR 39129). We published a correction notice on August 20, 1997, on the lateral extent of critical habitat (62 FR 44228). As a result of a 1998 lawsuit from the New Mexico Cattlegrower's Association, on October 19, 2005 (70 FR 60886), we published a revised final flycatcher critical habitat designation for portions of Arizona, California, New Mexico, Nevada, and Utah, totaling approximately 1,186 km (737 mi). River segments were designated as critical habitat in 15 of the 32 Management Units described in the Recovery Plan. We were sued by the Center for Biological Diversity over our 2005 critical habitat rule, and on July 13, 2010, we agreed to revise critical habitat. The resulting settlement left the existing critical habitat designation from 2005 in effect, and required that we deliver a proposed rule for a revised critical habitat to the **Federal Register** by July 31, 2011, and a final rule by July 31, 2012. On March 22, 2012, the settlement agreement was modified to make the final rule due to the **Federal Register** by December 14, 2012.

On August 15, 2011, we published a proposed rule to revise critical habitat for the flycatcher (76 FR 50542). We proposed to designate approximately 3,364 stream km (2,090 stream mi) of critical habitat, which includes various stream segments and their associated riparian areas, not exceeding the 100-year floodplain, on a combination of Federal, State, tribal, and private lands in California, Arizona, New Mexico, southern Nevada, Utah, and Colorado. We identified approximately 1,254 km (779 miles) of river habitat that we were considering for exclusion under section 4(b)(2) of the Act. That proposal had a 60-day comment period ending October 14, 2011.

Critical Habitat

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

Changes From Previously Proposed Critical Habitat

In this document, we are notifying the public of: (1) two changes to the proposed revision of flycatcher critical habitat, and (2) additional and revised areas that we are considering for exclusion from the final designation of

critical habitat. We describe below the two newly proposed changes to the critical habitat designation, and we describe the additional areas being considered for exclusion in the Consideration of Impacts under Section 4(b)(2) of the Act section of this document. All other areas proposed on August 15, 2011, remain proposed for designation as critical habitat.

After assessing the overall habitat at the Ash Meadows National Wildlife Refuge in Nevada, we are proposing a reduced area there that would be designated as critical habitat. On August 15, 2011, we proposed approximately 5.7 km (3.5 miles) of Carson Slough and 100.1 km (62.2 miles) of associated unnamed riparian areas as critical habitat within the Ash Meadows National Wildlife Refuge in the Amargosa Management Unit (76 FR 50542, p. 50568). Following the proposal, we collected new information on the available habitat at Ash Meadows and reevaluated the potential for flycatcher habitat occurrence on the Refuge. We found five separate locations that are essential for flycatcher conservation. These proposed locations total about 2.4 km (1.5 miles) of stream-side riparian habitat, a reduction of about 103.4 km (64.2 mi) from the August 15, 2011, proposed revised critical habitat in the refuge. Management at these locations will be included in the overall management and restoration efforts ongoing at Ash Meadows to recover numerous endemic and listed species. Management of flycatcher critical habitat will be consistent with and complementary to management and recovery needs of the endemic species. Landscape-level improvements at Ash Meadows will continue to restore the natural hydrology, topography, and vegetation communities and provide suitable flycatcher habitat, most likely in the form of Goodding's willow (*Salix gooddingii*) and leather-leaf ash (*Fraxinus velutina*). Both tree species are known to be used by flycatchers during migration and sometimes for nesting. The current areas proposed for critical habitat are expected to provide long-term native plant species communities that will support flycatcher habitat.

We also propose to designate one additional area that occurs in the Santa Cruz Management Unit, Pima County, Arizona, within the Gila Recovery Unit. This change would lengthen, both upstream and downstream, the segment of Cienega Creek that is proposed for designation as revised critical habitat. We are also proposing to designate as critical habitat two short segments of Empire Gulch, a tributary to the headwaters of Cienega Creek. The new segments of Cienega Creek and Empire Gulch identified in this document constitute an addition of 10.9 km to the areas we proposed for flycatcher critical habitat and the description below supplements the description of the Santa Cruz Management Unit in the August 15, 2011, proposal (76 FR 50542, p. 50574). No change is being identified for the proposed segment of the Santa Cruz River, also included within this Management Unit.

Proposed Critical Habitat Designation

Based on the changes to the proposed critical habitat area discussed below, Table 1 provides an updated accounting of the total areas we are proposing as revised critical habitat. This information revises Table 2 of the August 15, 2011 proposal (76 FR 50542, pp. 50561–50562). These data also reflect minor corrections in the accounting and mapping of some proposed segments, and present total areas (in hectares and acres) in addition to stream lengths reported in the proposed rule. We are currently proposing a total of 3,400 stream km (2,113 stream mi) encompassing 215,551 hectares (ha) (532,636 acres (ac)). This is a net increase of approximately 36 stream km (23 stream mi) from our August 15, 2011, proposal (76 FR 50542).

TABLE 1—REVISION TO TABLE 2 IN THE AUGUST 15, 2011, PROPOSED RULE (76 FR 50542, PP. 50561–50562). LAND OWNERSHIP, BY STATE, OF PROPOSED CRITICAL HABITAT AREAS FOR SOUTHWESTERN WILLOW FLYCATCHER, LISTED AS APPROXIMATE STREAM LENGTHS IN KM (MI); AND APPROXIMATE AREA IN HA (AC)

State	Federal	State	Tribal	Private	Other/ unclassified
AZ	465 (289); 42,126 (104,096).	52 (33); 4,530 (11,195)	87 (54); 14,257 (35,231).	378 (235); 21,549 (53,249).	0 (0); 417 (1,031).
CA	288 (179); 13,070 (32,296).	14 (9); 428 (1,058)	24 (15); 7,062 (17,449)	0.3 (0.2); 361 (893)	656 (408); 27,818 (68,740).
CA/AZ	165 (103); 0 (0)	12 (8); 0 (0)	79 (49); 0 (0)	43 (27); 0 (0)	20 (12); 0 (0).
CO	33 (21); 3,546 (8,762)	0.2 (0.1); 26 (64)	26 (16); 1,064 (2,629)	207 (128); 29,221 (72,206).	9 (6); 575 (1,421).
NV	42 (26); 2,330 (5,757)	14 (8); 1,061 (2,622)	0 (0); 2 (6)	21 (13); 1,496 (3,696)	0 (0); 1 (2).
NM	127 (79); 6,457 (15,957).	64 (40); 10,512 (25,975).	122 (76); 5,036 (12,445).	330 (205); 17,719 (43,785).	0 (0); 0 (0).
UT	41 (26); 1,564 (3,864)	0 (0); 32 (80)	41 (26); 2,063 (5,098)	36 (22); 1,226 (3,030)	0 (0); 0 (0).
Total	1,161 (722); 69,093 (170,731).	157 (98); 16,590 (40,995).	380 (236); 29,484 (72,857).	1,015 (631); 71,572 (176,859).	685 (426); 28,811 (71,573).

Notes: Totals do not sum because some stream segments have different ownership on each side of the bank resulting in those segments being counted twice. CA/AZ includes the stream segments along the Colorado River where California is on one stream bank and Arizona is on the other. Other/Unclassified includes some local government ownership and unclassified segments (where land ownership was not available).

Basin and Mohave Recovery Unit

Amargosa Management Unit, CA and NV

Updated information and further evaluation led us to modify the areas we are proposing as critical habitat on the Ash Meadows National Wildlife Refuge (see Changes from Previously Proposed Critical Habitat). These new areas replace the areas (Carson Slough and the unnamed riparian areas) that were identified in the proposed rule (76 FR 50542, p. 50568). We are proposing as critical habitat five areas on the Ash Meadows National Wildlife Refuge in Nye County, Nevada: Soda Spring segment (0.5 km, 0.3 miles; 1.2 ha, 3.0 ac); Lower Fairbanks segment (0.8 km, 0.5 mi; 2.3 ha, 5.8 ac); Crystal Reservoir segment (0.5 km, 0.3 mi; 11.7 ha, 28.9

ac); North Tubbs segment (0.2 km, 0.1 mi; 0.3 ha, 0.7 ac); and South Tubbs segment (0.4 km, 0.2 mi; 0.8 ha, 1.9 ac). These areas were not known to be occupied at the time of listing. These segments, together with the other segments in the Amargosa Management Unit (stream segments of the Amargosa River (12.3 km, 7.7 mi) and Willow Creek (3.5 km, 2.2 mi) in Inyo and San Bernardino Counties, California), are essential for flycatcher conservation because they are anticipated to provide habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these river segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

Gila Recovery Unit

Santa Cruz Management Unit, AZ

We received clarifying information that the proposed critical habitat segment on Cienega Creek did not include the location of a previously known flycatcher breeding territory as well as other recent flycatcher detections and habitat information. We also received new information about a breeding flycatcher and quality habitat along Empire Gulch (a tributary to the headwaters of Cienega Creek) from 2011 flycatcher surveys. Because of the limited information we have for flycatchers in the Santa Cruz Management Unit, these were important observations. As a result, this revision to proposed critical habitat extends the length of proposed flycatcher critical habitat on Cienega Creek, both upstream and downstream of the segment we identified on August 15, 2011 (76 FR 50542, p. 50574), and adds two short segments of Empire Gulch to the proposed revised critical habitat designation.

The new proposed Cienega Creek segment occurs within the boundary of the Bureau of Land Management's Las Cienegas National Conservation Area. We are extending the flycatcher critical habitat that we are proposing for Cienega Creek upstream and downstream from the original 7.0-km (4.4-mi) segment we proposed on August 15, 2011 (76 FR 50542, p. 50574), to a new 17.9-km (11.1-mi) segment. This new area includes the location of a previously detected flycatcher territory area, locations used by migratory flycatchers, and areas that may develop into future breeding habitat.

We were also provided new information during the comment period about a breeding flycatcher detected on Empire Gulch (a tributary to the headwaters of Cienega Creek) and habitat that may support breeding and migrating flycatchers. As a result, we are proposing to designate as critical habitat one isolated 0.4-km (0.3-mi) upper segment of Empire Gulch and a second 1.3-km (0.8-mi) lower segment of Empire Gulch that connects to Cienega Creek. Both of these segments are within the Las Cienegas National Conservation Area.

Neither of these newly proposed segments on Cienega Creek nor those on Empire Gulch were known to be occupied at the time of listing; however, they are believed to be essential for flycatcher conservation because of their ability to develop and sustain flycatcher habitat and territories to help meet recovery goals in this Management Unit. As noted earlier in this document (see Public Comments), we are specifically seeking information about flycatchers and stream segments within the Santa Cruz Management Unit. Both the Santa Cruz River and Cienega Creek segments were identified in the Recovery Plan as areas with substantial recovery value. The addition of the short segments of Empire Gulch is based upon flycatcher detections in 2011, and the fact that they are immediately adjacent to areas identified in the Recovery Plan. These segments are anticipated to provide flycatcher habitat for metapopulation stability, gene connectivity through this portion of the flycatcher's range, protection against catastrophic population loss, and population growth and colonization potential. As a result, these stream segments and associated flycatcher habitat are anticipated to support the strategy, rationale, and science of flycatcher conservation in order to meet territory and habitat-related recovery goals.

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

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

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

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal or more conservation than a critical habitat designation would provide; avoid disproportionate economic impacts resulting from the designation of critical habitat; or avoid potential conflicts with national security issues or other environmental issues. In the case of the flycatcher, the benefits of critical habitat include public awareness of the presence of flycatchers and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for flycatchers due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects carried out, authorized, or funded by Federal agencies.

Additional Sites Considered for Exclusion From Final Designation of Critical Habitat

We have not proposed to exclude any areas from critical habitat under section 4(b)(2) of the Act, but we did identify a number of areas we are considering for exclusion from the final revised critical habitat designation. We are now considering excluding an additional 211.0 km (131.1 mi) of proposed critical habitat, bringing the overall total of areas considered for exclusions, after revisions to one other unit, to 1,451.5 km (901.9 mi) encompassing approximately 135,587 ha (335,043 ac). We have included a list in Table 2 and descriptions of the additional areas we are considering for exclusion beyond those already identified in the August 15, 2011, proposed rule (76 FR 50542, pp. 50581–50594). The additional areas are being considered for exclusion based on other relevant impacts, and the list below is organized by Recovery Unit and Management Unit. The final

decision on whether to exclude any areas will be based on the best commercial and scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis and draft environmental assessment concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

The following areas, listed in Table 2 and described below, are being considered for exclusion from our final critical habitat designation, amending those areas described in the August 15, 2011, proposed rule (76 FR 50542, pp. 50581–50594).

TABLE 2—AMENDMENT TO TABLE 4 IN THE AUGUST 15, 2011, PROPOSED RULE (76 FR 50542, PP. 50582–50584). PLAN TYPE, STREAM SEGMENTS, AND APPROXIMATE STREAM LENGTH BEING CONSIDERED FOR EXCLUSION FROM FLYCATCHER CRITICAL HABITAT UNDER SECTION 4(b)(2) OF THE ACT BY MANAGEMENT UNIT

[Total represent all exclusions from August 15, 2011, proposed rule and the additional and revised areas listed here.]

Basis for possible exclusion	Streams segments considered for exclusion	Approximate stream length considered for exclusion in km (mi)
Santa Clara Management Unit (additional areas)		
Newhall Land and Farm Conservation Easement and Management Plan.	Santa Clara River	18.5 km (11.5 mi).
	Castaic Creek	4.8 km (3.0 mi).
Bill Williams Management Unit (additional areas)		
Lower Colorado River Multi-Species Conservation Plan (LCR MSCP).	Bill Williams River NWR*—Bill Williams River	16.6 km (10.3 mi).
Hoover to Parker Dam Management Unit (additional areas)		
LCR MSCP	Havasu NWR—Colorado River	35.2 km (21.9 mi).
Parker Dam to Southerly International Border Management Unit (additional areas)		
LCR MSCP	Colorado River (Cibola NWR) Colorado River (Imperial NWR)	17.9 km (11.1 mi). 38.1 km (23.7 mi).
Roosevelt Management Unit (additional areas)		
Pinal Creek Group/Freeport McMoRan Management Plan.	Pinal Creek	5.7 km (3.5 mi).
Lower Rio Grande Management Unit (additional areas)		
Rio Grande Canalization Project	Rio Grande	74.2 km (46.1 mi).
Subtotal of additional stream length being considered for exclusion (this table)		211.0 km (131.1 mi).
San Luis Valley Management Unit (revised areas)		
San Luis Valley Partnership and Regional Habitat Conservation Plan.	Rio Grande	141.0 km (87.6 mi).
	Conejos River	69.8 km (43.4 mi).
Total stream length being considered for exclusion (including stream lengths from all areas identified in proposal)		1,451.5 km (901.9 mi).

* NWR—National Wildlife Refuge.

Coastal California Recovery Unit: Santa Clara Management Unit, California

Conservation Easement and Management Plan: Newhall Land and Farming Company

Newhall Land and Farming Company (Newhall) controls land holdings and interests along a portion of the Santa Clara River (18.5 km, 11.5 mi) and Castaic Creek (4.8 km, 3.0 mi) confluence proposed as flycatcher critical habitat in Ventura County, California. Newhall has existing and proposed conservation easements for these lands. Some of the effects of nearby commercial and industrial development have been reduced and minimized by implementing conservation measures established through planning documents and section 7 biological opinions issued by the Service. Of the 655 ha (1,619 ac) of Newhall land within the proposed flycatcher critical habitat designation, 119 ha (293 ac) are currently within an existing or pending conservation easement, while the remaining acreage occurs within future or pending conservation easements. We will evaluate the conservation easements, management actions, commitments, and assurances associated with these lands for potential exclusion from the final revised designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Lower Colorado Recovery Unit: Bill Williams, Hoover to Parker Dam, and Parker Dam to Southerly International Border Management Units, Arizona and California

Lower Colorado River Multi-Species Conservation Plan (LCR MSCP), National Wildlife Refuges

In the August 15, 2011, proposed rule (76 FR 50542, p. 50590), we described the reasons for considering excluding the areas within the LCR MSCP. The flycatcher is a key species in the LCR MSCP, where the permittees will create and maintain 1,639 ha (4,050 ac) of flycatcher habitat over the 50-year life of the permit and habitat conservation plan (2005 to 2055). Additional research, management, monitoring, and protection of flycatchers and flycatcher habitat from fire, nest predators, and brood parasites will occur. In our description of this plan, we explained how the LCR MSCP works in conjunction with the four National Wildlife Refuges (Bill Williams, Havasu, Cibola, and Imperial) along this stretch of the Colorado River for management of flycatcher habitat. We intended to include these National Wildlife Refuges as part of the areas being considered for exclusion from the final critical habitat designation because of the management and protections provided by the LCR MSCP. However, we inadvertently omitted these areas from the areas calculated in Table 4 of the proposed rule (76 FR 50542, August 15, 2011, p. 50583). We are now providing notice that the areas being considered for exclusion within the LCR MSCP do include the National Wildlife Refuges as listed above in Table 2. The refuges occur within the Bill Williams Management Unit, Arizona; the Hoover to Parker Dam Management Unit, Arizona and California; and the Parker Dam to Southerly International Border Management Unit, Arizona and California.

Gila Recovery Unit: Roosevelt Management Unit, Arizona

Management Plan and Partnership: Pinal Creek Group and Freeport-McMoRan Remedial Action Program and Flycatcher Management Plan

The Pinal Creek Group, represented by Freeport McMoRan, is actively implementing the Water Quality Assurance Revolving Fund Remedial Action Program required by the Arizona Department of Environmental Quality Consent Order issued in April 1998 along lower Pinal Creek in Gila County, Arizona. These actions occur throughout the proposed 5.7 km (3.5 mi) of proposed flycatcher critical habitat. The primary purpose of this Remedial Action Program is the monitoring, extraction, and treatment of contaminated Pinal Creek groundwater. Implementation of these remedial projects has resulted in improved abundance, distribution, and quality of riparian habitat for flycatchers.

The extraction, treatment, and discharge of Pinal Creek groundwater onto the surface of the Pinal Creek bed and associated land management actions have been the primary actions that have helped establish and maintain increased abundance of riparian vegetation. The goal of the habitat mitigation and monitoring plan associated with the Remedial Action Program is the maintenance and long-term restoration of riparian habitat, dominated by native tree species. In addition to a more constant surface water and elevated groundwater table available to grow riparian plants, cattle grazing pressure on vegetation has been limited within the Pinal Creek area through fencing and modification of previous grazing strategies. Cattle grazing is now eliminated during the growing season (April through October). Also, nonnative plant management has reduced the occurrence of flammable plants and the potential impacts of wildfire. Much of these lands are also fenced properties that limit both public access and actions that could impact vegetation. From 1999 to 2007, these actions resulted in a 130 percent increase in total riparian vegetation volume within the 117-ha (290-ac) mitigation area. We will coordinate with the Pinal Creek Group and Freeport-McMoRan and examine what flycatcher conservation actions, management plans, and commitments and assurances occur on these lands to consider Pinal Creek for exclusion from the final revised designation of flycatcher critical habitat under section 4(b)(2) of the Act.

Rio Grande Recovery Unit: San Luis Valley Management Unit, Colorado

San Luis Valley Partnership and San Luis Valley Regional Habitat Conservation Plan

In the August 15, 2011, proposed rule (76 FR 50542, p. 50593), we described the reasons for considering excluding non-federal lands within the San Luis Valley Partnership. However, the total stream miles (159.4 km (99.0 mi)) listed in the proposed rule as being considered for exclusion in the San Luis Valley mistakenly included Federal lands along the Rio Grande. We are not considering excluding those Federal lands (18.4 km (11.4 mi)) on the Alamosa National Wildlife Refuge along the Rio Grande. So only non-Federal lands totaling 141.0 km (87.6 mi) along the Rio Grande and 69.8 km (43.4 mi) along the Conejos River are being considered for exclusion in the San Luis Valley Management Unit.

As one element of the private land conservation efforts, a collection of San Luis Valley, Colorado, towns, cities, counties, Federal agencies, and the State of Colorado are developing an HCP for the San Luis Valley. Public review and completion of the HCP is anticipated to overlap the rulemaking timeframe for this flycatcher critical habitat revision. The HCP as proposed would cover nearly 1.2 million ha (3 million ac) and 400 km (250 mi) of riparian habitat that could be used by the flycatcher and other riparian and aquatic-based species. The acreage covered by the regional HCP encompasses the entire Colorado portion of the San Luis Valley Management Unit, as described in the Recovery Plan, and extends well beyond the two stream segments along the Rio Grande and Conejos Rivers proposed as flycatcher critical habitat.

The San Luis Valley Regional HCP, if finalized before the completion of the final rule, could be the support for an exclusion under section 4(b)(2) of the Act. We are considering excluding the proposed segments of the Rio Grande and Conejos River in the San Luis Valley Management Unit (excluding the Alamosa NWR) from the final designation of revised flycatcher critical habitat.

Lower Rio Grande Management Unit, New Mexico

Management Plan and Partnership: Rio Grande Canalization Project

The Elephant Butte Irrigation District (EBID), El Paso County Water Improvement District No. 1 (EP#1), and United States Section of the International Boundary and Water Commission (IBWC) are planning restoration of riparian habitat along the Rio Grande in New Mexico from Percha Dam to American Dam, a portion of which, from Caballo Dam to Ft. Selden, has been proposed as critical habitat. The EBID and EP#1 manage the water from the Rio Grande in Elephant Butte Reservoir for beneficial use (including use for agricultural and municipal needs), and the IBWC is responsible for maintaining levees and channel and floodway management along this section of the lower Rio Grande (termed the Rio Grande Canalization Project). EBID, EP#1, the Audubon Society, and IBWC are establishing an agreement for a water transaction program that would provide water in the Rio Grande to a number of riparian sites for which IBWC has committed restoration plans. Through restoration plan and other commitments documented in a 2011 biological assessment, this partnership will conduct a variety of flycatcher and flycatcher habitat management actions in this area.

The restoration plan includes up to 30 riparian restoration sites, of which about 8 are specifically designed to create flycatcher habitat on at least 21 ha (53 ac) and as many as 42 ha (105 ac), and to include management of saltcedar that is intermixed with cottonwood, willow, mesquite, and arrowweed to maximize potential value for nesting or migratory flycatchers. These sites are to be restored by 2019. The restoration plan also calls for discontinuing mowing willows along the river for the benefit of flycatchers and planting willows in other areas where hydrological conditions are favorable. Restoration efforts will also physically reconnect old river channels and lower incised banks to the main river channel where appropriate. These efforts should result in additional flycatcher habitat beyond the minimum restoration sites. The restoration plan has established collaborative relationships between the EBID, EP#1, IBWC, Audubon Society, and Service to benefit the flycatcher, including monitoring for flycatcher presence and habitat condition throughout the reach. Because of the commitment to a comprehensive flycatcher management plan, development and agreements on the water transaction program and overall restoration plan, we will consider excluding the Lower Rio Grande segment from the final designation of revised flycatcher critical habitat under section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Draft Economic Analysis

The purpose of the draft economic analysis is to identify and analyze the potential economic impacts associated with the proposed flycatcher critical habitat revision. The draft economic analysis describes the economic impacts of all potential conservation efforts for the flycatcher; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the flycatcher over the next 20 years (2012–2031) which, for most parts of the analysis, was determined to be the appropriate period for analysis. This is because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The draft economic analysis estimates impacts to water management activities, however, over a 30-year period (2012–2041).

The draft economic analysis estimates economic impacts of flycatcher conservation efforts associated with the following categories of economic activity: (1) Water management activities; (2) livestock grazing; (3) residential and related development; (4) tribal activities; (5) transportation; (6) mining and oil and gas development; and (7) recreation activities. The total potential incremental economic impacts for all of the categories in areas proposed as revised critical habitat over the next 20 years range from $11 million to $19 million ($940,000 to $1.7 million annualized), assuming a 7 percent discount rate. A very brief summary of the estimated impacts within each category is provided below. Please refer to the draft economic analysis for a comprehensive discussion of the potential impacts.

Transportation

Our analysis suggests that transportation activities, such as road and bridge construction and maintenance, may experience the largest impacts. Transportation projects were more difficult to forecast, resulting in potential overstatement of the impacts. Our impact estimates were based on an increased level of consultation activity (and resulting project modifications for flycatcher conservation efforts) that is higher than the historical record of past activities. Transportation agencies at the Federal, State, and local level could incur costs associated with monitoring and education activities, fencing, habitat restoration and creation, timing restrictions, and administrative activities. Incremental impacts may reach $5.8 million over 20 years.

Water Management

Impacts to water management activities may be the next largest of any of the affected economic activities; however, the majority of the impact of conservation efforts to protect flycatcher will occur even if critical habitat is not designated (they are baseline impacts). All but two of the major dams and reservoirs within flycatcher proposed revised critical habitat, the Hansen Dam and the Mohave Dam, are located along river segments where the species' presence is either currently addressed, or otherwise well known to project proponents and managing agencies. Associated impacts in these areas are therefore assumed to be baseline, where most conservation activities and associated costs will occur regardless of whether critical habitat is designated. An exception is Luna Lake in the San Francisco Management Unit; although flycatcher territories have been detected in the area, Luna Lake does not have existing management plans for the flycatcher, and species occupancy may not be well known. Therefore, we assume that forecasted water management activity costs there are incremental.

Incremental impacts over the next 30 years (assuming a 7 percent discount rate) range from $1.4 million to $9.6 million. These incremental impacts include the costs of conservation efforts associated with section 7 consultations or the development of HCPs, as well as administrative efforts to consider potential adverse modification of habitat as part of future section 7 consultations.

Livestock Grazing

Impacts to grazing activities are likely to be smaller relative to water and transportation activities, but are anticipated to affect a broader geographic area. Grazing currently occurs in 27 of the 29 Management Units that include proposed revised critical habitat. As a result, some impacts may be experienced in most units. On Federal lands, reductions in grazing allotments are possible depending on the specific conditions

within the unit. The estimated potential, present value incremental costs range from $2.2 million to $3.5 million over the 20-year time period of the analysis. Impacts include the administrative costs of consultation with the Service, the lost value of grazing permits associated with reductions in authorized Animal Unit-Months, costs of constructing and maintaining fencing, and costs of cowbird trapping.

Residential and Commercial Development

Residential and related development activities are likely to be smaller in magnitude than grazing impacts; however estimated impacts are concentrated over a smaller geographic area. Nearly all impacts to development activities are estimated to occur in the California Management Units. Areas likely to see the greatest development pressure include Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino, and San Diego Counties, California, and Mohave County, Arizona.

Because the proposed revised critical habitat is located within the 100-year floodplain, the Federal Emergency Management Agency will regulate real estate development in any critical habitat we eventually designate. As a result, additional restrictions may be imposed by individual or local jurisdictions. The restrictions or regulations may require flood control facilities or other special engineering, often making development in floodways impractical and prohibitively expensive. Due to existing development restrictions, lands within proposed critical habitat that can be feasibly developed would be limited to areas where real estate demand is high enough to justify the costs associated with developing the floodplain.

Incremental impacts to residential development are estimated at $810,000 over 20 years. These are related to reduced land value associated with the need to set aside land on-site for the flycatcher; the need to implement additional project modifications, such as cowbird trapping, fencing, monitoring, and habitat management; time delays; and administrative costs. Because of the availability of alternative lands that would not be designated as critical habitat in these regions, these costs are likely to be borne by existing landowners in the form of reduced value for their existing properties. The estimated impacts would be felt immediately, in 2012, upon promulgation of the final rule, and reflect the change in the future, productive use of the properties.

Tribal Activities

Incremental impacts to tribal activities of approximately $660,000 are estimated to be associated with administrative impacts over the 20-year time frame of the analysis. However, tribal concerns focus on the potential impact that the designation could have on their ability to make use of natural resources, including water rights, on their sovereign lands. The absence of some cost information related to potential impacts of flycatcher critical habitat on tribal lands results in a probable underestimate of future costs to tribal entities. Lands belonging to 20 Tribes included within the boundaries of proposed revised critical habitat are under consideration for exclusion from the final designation.

Mining, and Oil and Gas Development

In 2005, potential impacts to oil and gas development were not identified as a significant issue and thus were not considered in the previous economic analysis. However, proposed revised critical habitat in the San Juan Management Unit in San Juan County, Utah, and La Plata County, Colorado, generated concern, because this area serves as a highly-developed source of oil and natural gas, with hundreds of existing wells. Due to the level of existing protections in riparian areas required by, or agreed to by, oil and gas developers and land and resource managers, no project modification costs are expected as a result of the designation of revised flycatcher critical habitat. However, baseline administrative costs of $33,000 for one formal and six informal consultations are expected due to limited oil and gas activities, including seismic studies and pipeline construction and maintenance. In addition to baseline costs, the analysis forecasts $11,000 in incremental administrative costs to consider adverse modification as part of these consultations.

While few active mineral mining activities occur within the proposed revised critical habitat, the mining industry has expressed concern that water use by existing or potential mining operations could be affected by flycatcher conservation activities, particularly the designation of critical habitat. There are currently no data that indicate whether existing or future diversions of water for mining activities (including groundwater pumping) reduce stream flow or modify hydrologic conditions to the degree that adversely impacts the flycatcher and its riparian habitat. As such, the analysis does not quantify the probability or extent to which water use for mining purposes would need to be curtailed or modified to remedy impacts to flycatcher. Additionally, impacts to extractive mining operations, such as sand and gravel pits, that cause direct habitat loss may occur as the result of critical habitat designation. However, project modification costs associated with these operations are uncertain due to the limited consultation history, and, as a result, our analysis is unable to forecast economic impacts for mining activities.

Recreation

Incremental impacts to recreational activities are unlikely to result from the designation. In the baseline, activities may be affected at Lake Isabella and Lake Roosevelt; however, baseline economic impacts in these areas are likely to be limited to $1.9 million over 20 years. In addition, management activities at a picnic site in the San Bernardino National Forest results in present value baseline costs of $40,100.

Draft Environmental Assessment

The purpose of the draft environmental assessment, prepared pursuant to the NEPA, is to identify and disclose the environmental consequences resulting from the proposed action of designating revised critical habitat for the flycatcher (please see further NEPA discussion below). In the draft environmental assessment, three alternatives are evaluated: Alternative A, the proposed rule with exclusion areas; Alternative B, proposed rule without exclusion areas; and the no action alternative that would leave the 2005 designated critical habitat in place. Under Alternative A, stream segments identified as being considered for exclusion could potentially be excluded in the final rule based on economic impact, national security, or other relevant impacts. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment. See **ADDRESSES** for information on how to obtain a copy of the draft environmental assessment.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis and draft environmental assessment, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh

the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our August 15, 2011, proposed rule (76 FR 50542, pp. 50594–50596), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our August 15, 2011, proposed rule concerning E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the draft economic analysis data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We are also updating our determinations concerning E.O. 12630 (Takings), E.O. 13211 (Energy, Supply, Distribution, and Use), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the flycatcher would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as (1) transportation; (2) water management; (3) livestock grazing; and (4) residential and commercial development. Other activities analyzed in the economic analysis, in particular, impacts to mining and recreation, found no incremental impacts and so were not further analyzed for effects on small entities. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not directly affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the flycatcher is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed revised designation of critical habitat for the flycatcher. Please refer to Appendix A in the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts. Our analysis of the five industries with possible incremental impacts on small business was based on the proportion of small entities affected within each industry and the annualized costs per entity as a percent of annual revenues. The following summary highlights the results of our analysis:

(1) For water management, we estimated that 1 small entity could be affected, representing 0.07 percent of the 1,350 small entities in the study area. The annualized effects represent 0.01 to 0.08 percent of the annual revenues of that one entity.

(2) For livestock grazing and residential and commercial development, the analysis distinguishes between entities expected to bear project modification costs with administrative costs and those expected to bear only administrative costs because the expected magnitude of impacts differs significantly across the two groups. We estimated three small grazing entities could be affected by both project modification and administrative costs, representing 0.49 percent of the 517 small entities in the study area. The annualized impacts per small entity in this group are expected to range from 0.24 percent to 0.43 percent of annual revenues. A further 29 small grazing entities may incur some minor administrative costs associated with informal consultations and technical assistance efforts, representing approximately 5.6 percent of small grazing entities across the study area. Annualized impacts per small entity for this group of 29 are estimated at 0.12 percent of annual revenues.

(3) We estimated 1 small entity in the residential and commercial development industry could be affected by land value loss and administrative costs, representing less than 0.01 percent of the 76,516 small entities in the study area. The annualized effects represent 5.72 percent of the annual revenues of that entity. We estimated 6

small residential and commercial development entities could experience administrative costs only, representing less than 0.01 percent of the small entities in the study area. The annualized effects per small entity for this group represent 0.05 percent of annual revenues.

(4) For transportation, we forecast some administrative costs associated with roads that may be managed by county or city governments. Using GIS data to identify where roads cross the proposed revised critical habitat designation, the analysis forecasts informal and technical assistance efforts in 4 counties out of the 49 counties in the study area. Of these counties, 3 counties, or 75 percent, have populations falling below 50,000 and therefore are considered small. Third-party administrative costs for these three counties represent between 0 and 0.06 percent of the respective county's annual revenues.

(5) For oil and gas development, we estimated 7 small entities could be affected, representing 2.3 percent of the 300 small entities in the study area. The annualized effects per small entity represent less than 0.01 percent of annual revenues.

None of the impacts rises to a level of a significant economic impact on a substantial number of small entities. We did estimate a substantial number of small livestock grazing entities (5.6 percent) could be impacted due to potential additional administrative costs. However, the impacts are not significant because they represent only 0.12 percent of the estimated annual revenues of those small entities. Alternately, we estimated an economic impact of 5.72 percent of annual revenues for one small entity in the residential development industry based on forecasted land value loss and administrative costs. However, this entity represents a very small percentage of small entities (less than 0.01 percent) in the development industry that will be affected. So although there is one industry (livestock grazing) with a substantial number of entities affected, and one industry (residential development) that has a small entity with potentially substantial impacts, there are no industries with significant economic impacts on a substantial number of small entities.

In summary, we have considered whether the proposed designation of revised critical habitat for the flycatcher would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have estimated the number of small entities that may be impacted in each industry affected by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant. E.O. 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.

Takings—Executive Order 12630

In this document, we affirm the information in our proposed rule concerning E.O. 12630 (Takings), having reviewed the preliminary assessment and the draft economic assessment, and prepared a Takings Implication Assessment. Although there may be some costs likely to be borne by existing landowners in the form of reduced value for their existing properties, these impacts are not expected to be significant, and therefore will not result in a significant takings implication.

Energy, Supply, Distribution, and Use—Executive Order 13211

We stated in our August 15, 2011, proposed rule that the proposed revised designation is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, etc. within the boundaries of proposed revised critical habitat. However, the San Juan Management Unit in San Juan County, Utah, and La Plata County, Colorado is expected to sustain limited oil and gas activities, including seismic studies and pipeline construction and maintenance. Our draft economic analysis reflects that we do not expect these activities to incur any project modification costs, but the analysis does estimate that over the next 20 years, there will be about $11,000 in incremental administrative costs to consider adverse modification as part of consultations on these activities. We do not consider these costs to be significant. Therefore, we affirm that this action is not a significant energy action and no Statement of Energy Effects is required.

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 NEPA 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)). However, because the range of the flycatcher includes States within the Tenth Circuit and under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we have undertaken a NEPA analysis and drafted an environmental assessment for the proposed critical habitat designation.

We have completed a draft environmental assessment, and it is now available for public review and comment (see **ADDRESSES**). The draft environmental assessment found that the designation of critical habitat for the southwestern willow flycatcher would not have direct impacts on the environment; designation is not expected to impose land use restrictions or prohibit land use activities. However, the designation of critical habitat could: (1) Increase the number of additional section 7 consultations for proposed projects within designated critical habitat; (2) increase the number of reinitiated section 7 consultations for ongoing projects within designated critical habitat; (3) maintain the southwestern willow flycatcher's primary constituent elements; (4) increase the likelihood of greater expenditures of time and Federal funds

to develop measures to prevent both adverse effects to the species and adverse modification to critical habitat; and (5) indirectly increase the likelihood of greater expenditure of non-Federal funds by project proponents to complete section 7 consultations and to develop reasonable and prudent alternatives (to avoid adverse modification of critical habitat by Federal agencies) that maintain critical habitat. Such an increase might occur where there is a Federal nexus to actions within areas with no known flycatcher territories, or from the addition of adverse modification analyses to jeopardy consultations in known flycatcher habitat.

Based on comments we received in preparing the previous critical habitat designation in 2005, internal scoping within the Service, a review of the previous consultation history of the species, and a review of public comments we received on the August 15, 2011, proposed rule, the Service analyzed the potential impacts of critical habitat designation on the following resources and resource management types: land use and management; fish, wildlife, and plants (including endangered and threatened species); fire management; water resources (including water management projects and groundwater pumping); livestock grazing; construction and development; tribal trust resources; soils and mineral resources; recreation; socioeconomics; and environmental justice.

The primary purpose of preparing an environmental assessment under NEPA is to determine whether a proposed action would have significant impacts on the human environment. If significant impacts may result from a proposed action, then an environmental impact statement is required (40 CFR 1502.3). Whether a proposed action exceeds a threshold of significance is determined by analyzing the context and the intensity of the proposed action (40 CFR 1508.27). The draft environmental assessment found that the impacts of the proposed critical habitat designation would be minor and not rise to a significant level, so preparation of an environmental impact statement is not required.

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Office and the Southwest Regional Office, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 50542, August 15, 2011, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(b) by revising paragraphs (b)(4), (b)(5), (b)(14), and (b)(28) of the entry for ''Southwestern Willow Flycatcher (*Empidonax traillii extimus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

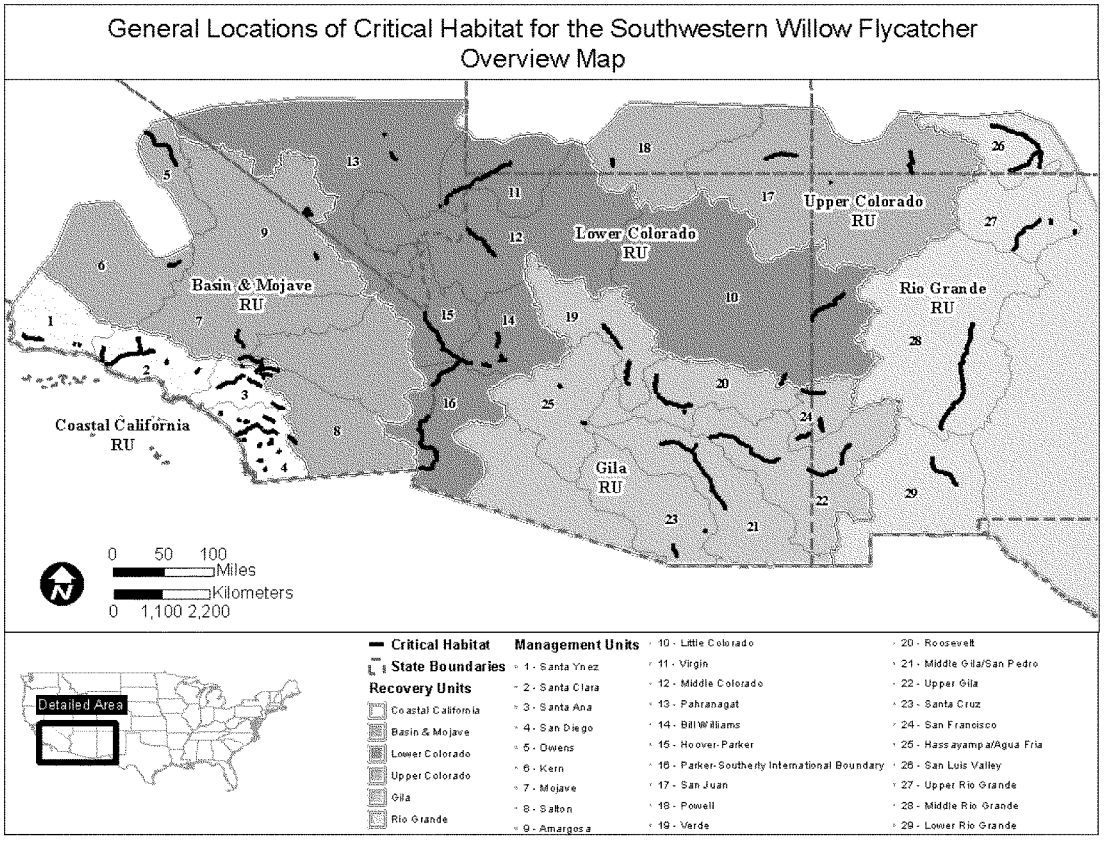
Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

* * * * *

(4) *Critical habitat map units.* Data layers defining map units were created in two steps. First, the linear segments were mapped from the National Hydrologic Dataset using USA Contiguous Equidistant Conic (North American Datum 1983) coordinates. Next, the lateral extents were digitized over the most recent available aerial photography using Albers Equal Area Conic (North American Datum 1983) coordinates. The textual description for each critical habitat unit below includes the Universal Transverse Mercator (UTM) zone and UTM easting (E) and northing (N) coordinate pairs for the starting and ending points. 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, *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0053 and at the field office responsible for the 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) The index map of southwestern willow flycatcher critical habitat units follows:

BILLING CODE 4310–55–P



* * * * *

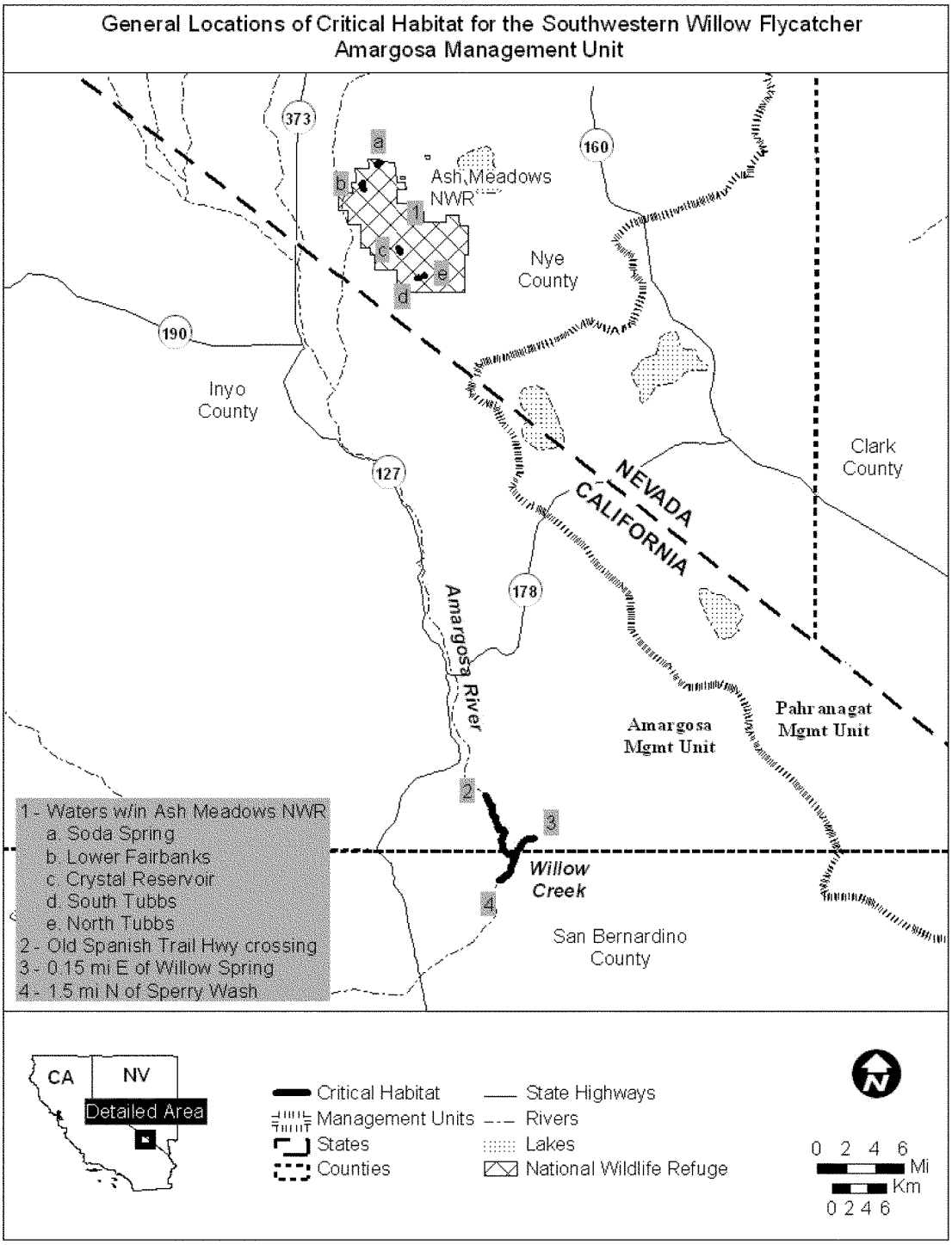
(i)

(14) Amargosa Management Unit.

Stream segment	Start: UTM Zone, E, N	End: UTM Zone, E, N
Amargosa River	11, 569473, 3967513	11, 570730, 3958035
Willow Creek	11, 574000, 3962736	11, 572077, 3960419
Soda Spring-Ash Meadow NWR	11, 559403, 4038347	11, 559129, 4038029
Lower Fairbanks-Ash Meadow NWR	11, 557830, 4036090	11, 557906, 4035290
Crystal Reservoir-Ash Meadows NWR	11, 561025, 4028706	11, 561307, 4028269
North Tubbs-Ash Meadows NWR	11, 562782, 4025402	11, 562970, 4025330
South Tubbs-Ash Meadows NWR	11, 563505, 4025681	11, 563483, 4025650

(ii) Ash Meadows Riparian Areas and Carson Slough (UTM zone 11, E, N): [Reserved]

(iii) Map of Amargosa Management Unit follows:

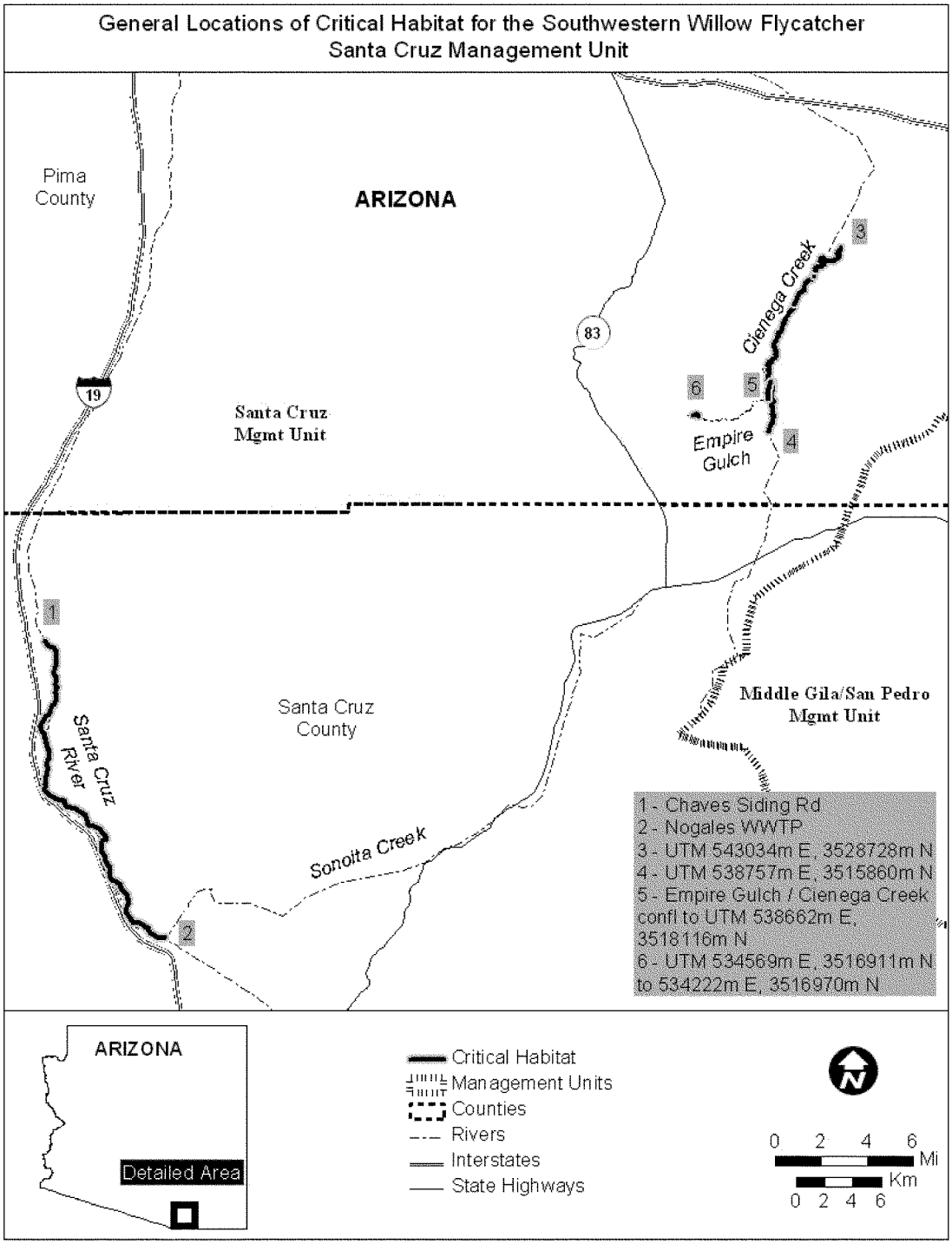

General Locations of Critical Habitat for the Southwestern Willow Flycatcher
Amargosa Management Unit
373
160
190
127
178
a
b
c
d
e
1
Ash Meadows NWR
Nye County
Inyo County
Clark County
NEVADA
CALIFORNIA
Amargosa River
Amargosa Mgmt Unit
Pahranagat Mgmt Unit
2
3
4
Willow Creek
San Bernardino County
1 - Waters w/in Ash Meadows NWR
a. Soda Spring
b. Lower Fairbanks
c. Crystal Reservoir
d. South Tubbs
e. North Tubbs
2 - Old Spanish Trail Hwy crossing
3 - 0.15 mi E of Willow Spring
4 - 1.5 mi N of Sperry Wash
CA
NV
Detailed Area
Critical Habitat
Management Units
States
Counties
State Highways
Rivers
Lakes
National Wildlife Refuge
N
0 2 4 6 Mi
0 2 4 6 Km

* * * * *

(28) Santa Cruz Management Unit. (i)

Stream segment	Start: UTM Zone, E, N	End: UTM Zone, E, N
Santa Cruz River	12, 502742, 3480432	12, 502742, 3480432
Cienega Creek	12, 543034, 3528728	12, 538757, 3515860
Empire Gulch (upper)	12, 534569, 3516911	12, 534222, 3516970
Empire Gulch (lower)	12, 538826, 3519337	12, 538662, 3518116

(ii) Map of Santa Cruz Management Unit follows:



* * * * *

Dated: June 28, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16990 Filed 7–11–12; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 77, No. 134
Thursday, July 12, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 6, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Consumer Complaint Monitoring System—Food Safety Mobile Questionnaire.

Omb Control Number: 0583–0133.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS tracks consumer complaints about meat, poultry, and egg products. FSIS also has a Food Safety Mobile that travels around the continental United States promoting food safety with respect to meal, poultry, and egg products.

Need and Use of the Information: The Consumer Complaint Monitoring System web portal is used primarily to track consumer complaints regarding meat, poultry, and egg products. FSIS will also collect information that will assist them in planning and scheduling visits of the Food Safety Mobile. FSIS will use the information collected from the web portal and the questionnaire to look for trends that will enhance the Agency's food safety efforts.

Description of Respondents: Individuals or households; not-for-profit institutions.

Number of Respondents: 1,150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 263.

Food Safety and Inspection Service

Title: Voluntary Recalls of Meat and Poultry Products.

OMB Control Number: 0583–0135.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. A firm that has produced or imported meat or poultry that is adulterated or misbranded and is being distributed in commerce, may voluntarily recall the product in question. When a firm voluntarily recalls a product, FSIS will conduct a recall effectiveness check.

Need and Use of the Information: In conducting a recall, the establishment will be asked to provide FSIS with some basic information, including the identity of the recalled product, the reason for the recall, and information about the distributors and customers of the product. FSIS will check on the effectiveness of the recall to ensure that all products subject to recall are accounted for. FSIS field personnel will use FSIS form 8400–4 A to determine (1) if the retail consignee received notification of the recall and (2) the amount of recalled products received. FSIS field personnel will also use FSIS form 8400–4 B to verify that product held by the retail consignee was properly disposed.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,090.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,600.

Food Safety and Inspection Service

Title: Petitions for Rulemaking.

OMB Control Number: 0583–0136.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Product Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The Administrative Procedures Act requires that Federal agencies give interested persons the right to petition for issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)).

Need and Use of the Information: FSIS will use the information associated with petitions to determine whether to issue, amend, or repeal its regulations.

FSIS will use the information provided to assess the merits of the petition.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 400.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–16968 Filed 7–11–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC007

Joint Subcommittee on Aquaculture Research and Development Strategic Plan

AGENCIES: Agricultural Research Service (ARS), U.S. Department of Agriculture (USDA); National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: NOAA and U.S. Department of Agriculture Agricultural Research Service (USDA-ARS) announce on behalf of the Federal Interagency Working Group on Aquaculture under the Office of Science and Technology Policy that a draft National Aquaculture Research and Development Strategic Plan (R&D Plan) for the United States is being made available for public review and comment. This plan will provide a framework for federal agencies to develop programs for research and development that affect the production of aquatic organisms such as finfish, crustaceans, mollusks, and algae. We are soliciting public comment in regard to priorities, vision, and goals. Please be specific regarding what section or content in the R&D plan your comment refers. The draft R&D plan can be found at *http://www.ars.usda.gov/research/programs/programs.htm?np_code=106&docid=22641*.

DATES: Written comments must be received by 5 p.m. Eastern Standard Time (EST), *August 27, 2012.*

ADDRESSES: You may submit comments on this action identified by NOAA–NMFS–2012–0136 by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the federal e-Rulemaking Portal, *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first enter NOAA–NMFS–2012–0136 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line. You may also view supporting and related materials. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The agency will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.
- *Mail/Commercial Delivery:* Please send two copies of your comment to RIN 0648–XC007, Dr. Jeff Silverstein, USDA–ARS, National Program Leader-Aquaculture, 5601 Sunnyside Ave., Room 4–2106, Beltsville, MD 20705. Please state that your comment refers to RIN 0648–XC007.

FOR FURTHER INFORMATION CONTACT: ARS: Dr. Jeffrey Silverstein, National Program Leader for Aquaculture, USDA–ARS Office of National Programs, 5601 Sunnyside Ave., Room 4–2106, Beltsville, MD 20705; (301) 504–5925. NMFS: Dr. Michael Rubino, Director, Office of Aquaculture, NOAA Fisheries, 1315 East-West Hwy, SSMC#3 Rm. 13137, Silver Spring, MD 20910; (301) 427–8325. To receive a hard copy of the R&D Plan please contact Dr. Jeff Silverstein.

SUPPLEMENTARY INFORMATION: Aquaculture is the production of finfish, shellfish, algae, plants, and other aquatic organisms (except mammals and birds) for (1) food and other commercial products; (2) wild stock replenishment for commercial or recreational fisheries; (3) rebuilding populations of threatened or endangered species under species recovery and conservation plans; and (4) restoration and conservation of aquatic and marine habitat.

The National Aquaculture Act (Pub. L. 96–362, 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act (Pub. L. 99–198, 99 Stat. 1641) were passed to promote aquaculture in the Nation by:

1. Declaring a national aquaculture policy to encourage development of aquaculture in the United States,
2. Calling for the establishment and implementation of a national aquaculture development plan, and
3. Encouraging aquaculture activities and programs in both the public and private sectors of the economy that will result in increased aquacultural production, coordination of domestic aquaculture efforts, conservation and enhancement of aquatic resources, and creation of new industries and job opportunities.

The legislation emphasizes the need for government-wide coordination of national activities regarding aquaculture. To this end, it established a federal interagency aquaculture coordinating group within the Office of Science and Technology Policy that operates as the Joint Subcommittee on Aquaculture (JSA).

The JSA prepared an R&D Plan to help shape, focus, and coordinate interagency research and development efforts on the highest-priority strategic goals and crosscutting objectives over 5–10 years that will encourage aquaculture development and uses in the Nation.

The JSA R&D Plan envisions ''a globally competitive, technologically appropriate, and diverse aquaculture sector in the United States that meets increasing demand for seafood and products that are affordable and meet high standards for safety, quality, and environmental stewardship, with maximum opportunity for profitability and economic growth. A critical element of this vision is that the aquaculture sector develops in concert with, natural ecosystems that support recreational, fishery, and environmental services needs.''

The R&D Plan identifies nine strategic goals:

1. Advance Integration of Aquaculture Development and Environmental Conservation.
2. Employ Genetics to Increase Productivity and Protect Natural Populations.
3. Improve Aquatic Animal Health.
4. Improve Production Efficiency and Well-being.
5. Improve Nutrition and Develop Novel Feeds.
6. Increase Supply of Nutritious, Safe, High-quality Seafood.
7. Introduce Innovative Production Systems.
8. Create Skilled Workforce and Effective Technology Transfer.
9. Integrate Economic and Social Sciences.

Each goal, along with its outcomes, milestones, and performance measures, is described in detail within the R&D Plan.

Dated: July 9, 2012.

Michael Rubino,

Director, Office of Aquaculture, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

Dated: July 2, 2012.

Jeffrey Silverstein,

National Program Leader for Aquaculture, USDA-ARS Office of National Programs.

[FR Doc. 2012–17051 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Department of Agriculture (USDA), Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues relating to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. A draft agenda is included with this notice. The meeting is open to the public.

DATES: The AAQTF meeting will convene on Wednesday, August 1, 2012, from 8:00 a.m. to 5:00 p.m., and Thursday, August 2, 2012, from 8:00 a.m. to 4:00 p.m. A portion of the meeting is reserved for public comment. See the procedure section of this notice.

ADDRESSES: The meeting will be held at the Holiday Inn Syracuse/Liverpool, 441 Electronics Parkway, Liverpool, New York 13088; telephone: (315) 457–1122.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Elvis L. Graves, Designated Federal Official, Department of Agriculture, Natural Resources Conservation Service, 2901 East Lee Street, Suite 2100, Greensboro, North Carolina 27401; telephone: (336) 370–3352; fax: (336) 273–8132; or email: *elvis.graves@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF, including revisions to the meeting agenda that may occur after this **Federal Register** Notice is published, may be found at: *http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/air.*

Draft Agenda

Meeting of AAQTF

August 1–2, 2012

A. Welcome to Syracuse, New York USDA, NRCS, and local officials
B. Review Minutes and Action Items from Last Meeting
C. USDA Agency and Environmental Protection Agency Updates
D. Air Quality Issues/Concerns Discussion
- Continued discussion of goals for Task Force
- Anaerobic Digester Technologies
- Odor Management Technologies
- Committee Updates

E. Next Meeting, time/place

Note: Public Input (time will be reserved for public comment. Individual presentations will be limited to 5 minutes).

Please note that the sequence of events in the agenda is subject to change to accommodate potential changes in schedules of expected speakers and extended discussions.

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the meeting. Persons wishing to make an oral presentation should notify Elvis Graves at (336) 370–3352 no later than July 20, 2012. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring at least 35 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be submitted and received by Elvis Graves no later than July 20, 2012.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Elvis Graves. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2000 (voice and TDD).

Signed this 2nd day of July, 2012, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2012–16975 Filed 7–11–12; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas 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 factfinding meeting of the Arkansas Advisory Committee to the Commission will convene on Wednesday, September 12, 2012 thru Thursday, September 13, 2012 and adjourn each day at approximately 5:00 p.m. (CST). The meeting will convene at University of Little Rock William H. Bowen School of Law Auditorium, 1201 McMath Avenue, Little Rock, AR 72202. The purpose of the meeting is to receive information from local, state and federal officials, community leaders and experts on whether or not there is a need for a state civil rights enforcement agency.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 12, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by email to *frobinson@usccr.gov*.

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 Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Central 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 Washington, DC, July 9, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–17015 Filed 7–11–12; 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 Institute of Standards and Technology (NIST).

Title: NIST Associates Information System.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission (new information collection).

Burden Hours: 2,000.

Number of Respondents: 4,000.

Average Hours per Response: 30 minutes.

Needs and Uses: NIST Associates (NA) will include guest researchers, research associates, contractors, and other non-NIST employees that require access to the NIST campuses or resources. The NIST Associates Information System (NAIS) information collection instrument(s) are completed by incoming NAs. They are asked to provide personal identifying data including home address, date and place of birth, employer name and address, and basic security information. The data provided by the collection instruments is input into NAIS, which automatically populates the appropriate forms, and is routed through the approval process. NIST's Office of Security receives security forms through the NAIS process and is able to allow preliminary access to NIST for NAs. The data collected is the basis for further security investigations as necessary.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jessica Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to, OMB Desk Officer, Jasmeet Seehra, FAX Number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: July 6, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16998 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–13–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: Marine Recreational Information Program.

OMB Control Number: 0648–0052.

Form Number(s): NA.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 464,868.

Average Hours Per Response: 10 minutes per survey.

Burden Hours: 63,687.

Needs and Uses: This request is for revision of a current information collection.

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To meet these requirements, NOAA Fisheries has designed and tested new approaches for sampling and surveying recreational anglers. Revision: A mail survey that samples from a residential address frame will be implemented to collect data on the number of marine recreational anglers and the number of recreational fishing trips. This survey will replace the Coastal Household Telephone Survey, which has traditionally been used to collect recreational fishing effort data. In addition, the sampling and estimation procedures for the access-point angler intercept survey have been revised to ensure better coverage and representation of recreational fishing activity.

This revision also eliminates several data collections that were implemented to test revised sampling procedures. The following data collections will be eliminated: Longitudinal Sampling for Coastal Household Telephone Survey, a Directory Frame Telephone Survey of Licensed Marine Recreational Anglers, the Angler Diary Recruitment Screening Questionnaire, Vessel Directory Maintenance and Biological Data Collection.

Affected Public: Individuals or households.

Frequency: Annually, on occasion, every three years.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 6, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–16999 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and

Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery.

OMB Control Number: 0648–0398.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 2,980.

Average Time per Response: IFQ Registered Buyer Ex-vessel Value and Volume Report and IFQ Permit Holder Fee Submission Form, 2 hours each.

Burden Hours: 5,960.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Magnuson Stevens Fishery Conservation and Management Act requires the Secretary of Commerce conduct a Cost Recovery Program to cover the management and enforcement costs of the Alaska Individual Fishing Quota (IFQ) Program. This Cost Recovery Program requires IFQ permit holders to submit information about the value of landings of IFQ species and to calculate and submit fees. The Cost Recovery Program requires Registered Buyers to submit information about the value and volume of landings of IFQ species.

Revision: The IFQ liability appeals are no longer applicable and this burden and cost have been removed from the information collection.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 9, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17028 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC104

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of two scientific research permits.

SUMMARY: Notice is hereby given that NMFS has issued Permit 16110 to Marin Municipal Water District and Permit 15730 to Salmon Protection and Watershed Network.

ADDRESSES: The approved application for each permit is available on the Applications and Permits for Protected Species (APPS) *https://apps.nmfs.noaa.gov* Web site by searching the permit number within the Search Database page. The applications, issued permits and supporting documents are also available upon written request or by appointment: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 (ph: (707) 575–6097, fax: (707) 578–3435).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at 707–575–6097, or email: *Jeffrey.Jahn@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally endangered Central California Coast coho salmon (*Oncorhyncus kisutch*), threatened Central California Coast steelhead (*O. mykiss*), and threatened California Coastal Chinook Salmon (*O. tshawytscha*).

Permits Issued

Permit 16110

A notice of the receipt of an application for a scientific research permit renewal (16110) was published in the **Federal Register** on June 1, 2011 (76 FR 31590). Permit 16110 was issued to the Marin Municipal Water District on June 5, 2012 and expires on June 30, 2017.

Permit 16110 is for research to be conducted in the Lagunitas Creek and Walker Creek watersheds in Marin County, California. The main purpose of the research is to conduct habitat assessments, biological inventories, and monitor salmon populations in these watersheds. Permit 16110 authorizes capturing (backpack electrofishing, trapping), observing (snorkel surveys), anesthetizing, handling (measuring), tissue sampling, and release of juvenile Central California Coast (CCC) coho salmon, Central California Coast (CCC) steelhead, and California Coastal (CC) Chinook Salmon, henceforth referred to as ESA-listed salmonids.

Permit 11610 authorizes non-lethal take and low levels of unintentional lethal take of juvenile ESA-listed salmonids, as well as adult carcasses of these species. Permit 16110 does not authorize any lethal take of adult ESA-listed salmonids.

Permit 15730

A notice of the receipt of an application for a scientific research and enhancement permit renewal (15730) was published in the **Federal Register** on June 1, 2011 (76 FR 31590). Permit 15730 was issued to the Salmon Protection and Watershed Network (SPAWN) on June 5, 2012, and expires on June 30, 2017.

Permit 15730 is for research to be conducted in Lagunitas Creek in Marin County, CA. The primary objectives to which ESA-listed salmonids may be taken are to provide baseline data on salmonid presence, habitat use, and abundance in study watersheds and to rescue and relocate stranded juvenile salmonids. Take activities associated with research on juvenile steelhead include the following: capture (backpack electrofishing), observing (spawner surveys), anesthetizing, scale and tissue sampling, tagging (Passive

Integrated Transponder tags), trapping (pipe traps), and release of fish. Permit 15730 authorizes SPAWN non-lethal and low levels of unintentional lethal take of juvenile ESA-listed salmonids and take of adult carcasses of these species. Permit 15730 does not authorize any intentional lethal take of ESA-listed salmonids or lethal or non-lethal take of live adult salmonids.

Dated: July 9, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17055 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC103

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) of the potential effects of two direct take permits for hatchery operations in the Snake River basin involving Snake River fall Chinook salmon. The permit applicants are the Washington Department of Fish and Wildlife (WDFW), Idaho Department of Fish and Game, and the Bureau of Indian Affairs (BIA) on behalf of the Nez Perce Tribe (NPT). The proposed permits would expire on December 31, 2017. This document serves to notify the public of the draft EA for public review, comment, and submission of written data, views, arguments or other relevant information before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS. All comments and other information received will become part of the public record and will be available for review pursuant to section 10(c) of the Endangered Species Act (ESA).

DATES: Comments and other submissions must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on July 27, 2012.

ADDRESSES: Written responses to the environmental assessment should be sent to Brett Farman, National Marine Fisheries Services, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by email to: *SnakeFallEA.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Snake Fall Chinook Hatchery Assessment. Comments may also be sent via facsimile (fax) to (503) 872–2737. Requests for copies of the draft environmental assessment should be directed to the National Marine Fisheries Services, Salmon Management Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Brett Farman at (503) 231–6222 or email: *brett.farman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally produced and artificially propagated Snake River fall-run.

Background

Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

The proposed action is to issue the two section 10(a)(1)(A) direct take permits. The receipt of the applications for the permits was previously noticed (76 FR 43986, July 22, 2011), and comments were invited. Hatchery operations to be permitted would be carried out at the Nez Perce Tribal Hatchery, and at Lyons Ferry, Oxbow, and Irrigon Hatcheries, and associated facilities. The purpose of these programs is to mitigate for losses of Snake River fall Chinook salmon caused by the four lower Snake River dams, the Federal Columbia River Power System, and the Hells Canyon dam complex.

Authority

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on two ESA section 10(a)(1)(A) permits. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Dated: July 9, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17052 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ28

Marine Mammals; Subsistence Taking of Northern Fur Seals; St. Paul Island

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

ACTION: Notice and request for comments.

SUMMARY: NMFS announces the receipt of a petition for rulemaking under the Administrative Procedure Act (APA). The Pribilof Island Community of St. Paul Island, Aleut Community of St. Paul Island-Tribal Government (St. Paul) petitioned NMFS to revise regulations governing the subsistence taking of northern fur seals on St. Paul Island. St. Paul's petition requests that NMFS revise the regulations to allow residents of St. Paul, Alaska to: Take male young of the year (less than 1 year old) fur seals; take a total of up to 3,000 fur seals annually compared to 2,000 currently allowed, including up to 1,500 male young of the year and up to 1,500 sub-adult (1–4 years old) males; hunt or harvest fur seals during a total of 329 days annually, rather than the 47-day harvest season provided for under existing regulations; and take fur seals with firearms, in addition to harvesting (the current method of herding, stunning, and immediate exsanguination, which is allowed under existing regulations). NMFS solicits public comment on all aspects of this request.

DATES: Written comments must be received at the appropriate address or fax number by September 10, 2012.

ADDRESSES: Send comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2012–0038, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0038 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* 907–586–7557.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Information related to the request for rulemaking is available on the Internet at the following address: *http://www.alaskafisheries.noaa.gov/protectedresources/seals/fur.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Williams, (907) 271–5006, email *Michael.Williams@noaa.gov;* Jon Kurland, (907) 586–7235, email *Jon.Kurland@noaa.gov;* or Shannon Bettridge, (301) 427–8402, email *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION: The subsistence harvest of northern fur seals on the Pribilof Islands is governed by regulations at 50 CFR 216.71–.74 established under the Fur Seal Act (FSA) 16 U.S.C. 1511 *et seq.,* and Marine Mammal Protection Act (MMPA) 16 U.S.C. 1361 *et seq.* The regulations impose a variety of restrictions on the harvest of fur seals on St. Paul Island. The regulations (1) Establish a 47-day period between June 23 and August 8 of each year during which fur seals may be taken for subsistence purposes; (2) limit the harvest of sub-adult male fur seals to those less than 124.5 cm in length (i.e., ≤4 years old); (3) identify specific hauling grounds from which fur seals may be taken and provide that no hauling ground on St. Paul may be harvested more than once per week; (4) require that NMFS receive adequate advance notice of scheduled harvest activities to enable NMFS to monitor the harvest; (5) and require NMFS to publish triennially a summary of the harvest during the preceding three years and the estimated subsistence needs for the next three years (71 FR 8222; 73 FR 49616; 77 FR 6682). The harvest regulations additionally state (50 CFR 216.72(c)(2)): No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of sub-adult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

St. Paul submitted a resolution on February 16, 2007, requesting that NMFS change the regulations to allow a harvest that St. Paul asserts better fits the scope and duration of their customary and traditional seal harvests and to allow hunting with firearms that St. Paul asserts will better meet their changing subsistence needs. NMFS considers this resolution, together with subsequent letters and documents submitted in the past few years by St. Paul, to be a petition for rulemaking under the APA.

The St. Paul petition states that the subsistence harvest methods currently authorized by NMFS were developed to transition from a commercial harvest to a subsistence harvest and no longer accommodate the community's changing subsistence needs. The petition further suggests that the subsistence harvest methods currently authorized do not reflect the customary and traditional practices of harvesting young of the year (i.e., less than one year old) fur seals and hunting male fur seals of various ages. The current method, hereafter referred to as ''harvest,'' involves organized herding and driving of groups of sub-adult male fur seals from the hauling grounds to the killing fields, where they are taken by harvesters who come in close proximity with the seals before taking them. By contrast, ''hunting'' refers to an individual shooting with a firearm specific fur seals from some distance while the seals occupy the hauling (or breeding) grounds.

St. Paul's petition requests that NMFS establish separate seasons during which residents may hunt and harvest fur seals. St. Paul's petition recognizes three different age classes of sub-adult male fur seals: young of the year (animals less than one year old); yearlings (one-year old animals); and sub-adults (animals between 2 and 4 years old). St. Paul requested that NMFS modify its regulations to allow:

(1) Take by harvesting and individual hunting of up to 1,500 young of the year male fur seals annually from August 25 to December 31, of which no more than 10% may be composed of incidental take of female young of the year;

(2) Take by harvesting and hunting with firearms of up to 1,500 sub-adult (i.e., 1–4 year-old) male fur seals annually in the following St. Paul hauling grounds: Reef, Gorbatch, Morjovi, Sea Lion Neck, Vostochni, Big Zapadni, Little Zapadni, Zapadni Reef, Tolstoi, Polovina, Lukanin, and Ketovi;

(3) Take by firearms sub-adult males at Sea Lion Neck beginning September 1 through June 1 of each year and from October 15 through June 1 at the following hauling grounds: Reef, Gorbatch, Morjovi, Vostochni, Big Zapadni, Little Zapadni, Zapadni Reef, Tolstoi, Polovina, Lukanin, and Ketovi;

(4) Extension of the current annual harvest period for all sub-adult males by two days (from June 23–August 8 to June 23–August 10) and an additional harvest period for sub-adult males from September 15 to October 31; and

(5) St. Paul residents to individually hunt young of the year fur seals with firearms no larger than .22 caliber and a minimum of .22 caliber to take sub-adult males.

Taking outside the June 23 to August 8 season, taking of adult or young of the year fur seals, and the intentional taking of sub-adult female fur seals are all prohibited under the current regulations.

St. Paul requests that NMFS authorize the hunting and harvesting of young of the year and sub-adult male fur seals

during the specified seasons at any of the following hauling grounds: Reef, Gorbatch, Morjovi, Sea Lion Neck, Vostochni, Big Zapadni, Little Zapadni, Zapadni Reef, Tolstoi, Polovina, Lukanin, and Ketovi. The current regulations allow fur seals to be harvested in all of these hauling grounds. St. Paul's intent in describing these subsistence use areas was to clarify ambiguity in the current regulations which use a combination of regional fur seal breeding area names (e.g., Northeast Point) along with individually-named breeding areas (e.g., Kitovi). St. Paul intends for the regulations to employ the locally-used seasonal subsistence place names for those places where northern fur seals may be harvested under the regulations. According to St. Paul, a separate spring hunt and fall hunt and harvest season at the above hauling grounds would better meet the community's customary and traditional use of the northern fur seal. These changes are summarized in Table 1.

TABLE 1—REQUESTED MODIFICATIONS OF THE NORTHERN FUR SEAL HARVESTING REGULATIONS AS COMPARED TO EXISTING REGULATIONS

	Current regulations	Petitioned changes	
Subsistence method	Coordinated harvesting crew	Coordinated harvesting crew	Individuals hunting with rirearms
Season for Young-of-the-Year (<1 year old) males.	None	Aug. 25–Dec. 31	Aug. 25–Dec. 31.
Annual Number of Young-of-the-Year (<1 year old) males.	0	1,500 including both methods.	
Season for Sub-adult (1–4 year old) males.	June 23–Aug. 8	June 23–Aug. 10 Sept. 15–Oct. 31	Sept. 1–June 1 (Sea Lion Neck) Oct. 15–June 1 (other specified hauling ground locations).
Annual Number of Sub-adult (1–4 year old) males.	1,645–2,000 (for 2011–2013)	1,500 Including both methods.	
Total open period	47 days	178 days	281 days.

NMFS is uncertain about the frequency of young of the year and yearlings occupying hauling grounds, rather than breeding areas, during the time of year proposed for taking by St. Paul. It is also uncertain whether hunters would consider young of the year and yearlings more available and accessible on the specified hauling grounds than breeding grounds.

Each of the St. Paul's named hauling grounds has an associated breeding ground. Adult, sub-adult, and young of the year fur seals alter their use of hauling grounds and breeding grounds as the season progresses, largely as a result of the departure of territorial adult males beginning in August and the onset of strong storms later in the autumn. As a result, in late summer the distinction between hauling grounds and breeding grounds becomes unclear.

Moreover, NMFS scientists have determined the vast majority of yearlings do not return to land and instead remain at sea. On rare occasions during the autumn yearling fur seals can be found on the Pribilof Islands but are not considered a significant part of the population on land until they are two years old. The current timing restriction results in exclusion of yearlings from the harvest, as few if any are found on land until well after the end of the subsistence harvest season (August 8). St. Paul's request to take fur seals in September–December will likely result in the taking of yearlings and therefore this separate age class can be grouped into the sub-adult category for the purposes of the petition. NMFS has not previously considered the taking of yearlings in prior harvest assessments.

The Assistant Administrator for Fisheries, NOAA, has determined that the petition contains enough information to warrant consideration of the requests. NMFS solicits public comment on St. Paul's request to modify regulations that govern the taking of fur seals for subsistence purposes by residents of St. Paul Island.

NMFS is particularly interested in information that would improve NMFS's evaluation of the effects on the fur seal population of:

(1) Extension of the current 47-day harvest season to a 178-day harvest season and creation of an additional 281-day individual hunting season with firearms;

(2) Increased lethal takes of adult and sub-adult females by hunters due to the difficulty of distinguishing young male from young female fur seals at a distance;

(3) Increased human presence on the hauling grounds and breeding grounds throughout the year and resultant harassment of fur seals; and

(4) Seals wounded, but not lethally taken, by hunters using firearms.

NMFS is also interested in information regarding the extent to which young of the year occupy the hauling grounds as opposed to the breeding grounds. Finally, NMFS is interested in information that would improve our evaluation of the risk to field researchers studying fur seals, who may be present on or near these sites during hunting activities.

NMFS will consider public comments received in determining whether to proceed with any of the revisions of the regulations requested by St. Paul. Upon determining whether to initiate the requested or alternative rulemaking, the Assistant Administrator for Fisheries,

NOAA, will publish in the **Federal Register** a proposed rule or notice of the Agency's final disposition of St. Paul's petition.

Dated: July 9, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–17034 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board. Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the Agenda below.

DATES: The announced meeting is scheduled for: Monday, August 6 2012.

ADDRESSES: Conference Call. Public access is available at SSMC Bldg. 3, ROOM # 10836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, or *Elizabeth.Ban@noaa.gov* or (301) 734–1082.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Monday, August 6, 2012—2 p.m. to 4 p.m.

Agenda

2:00 Welcome and roll call
2:10 Discussion and approval of draft Advisory Board report to Congress on the state of Sea Grant.
3:45 Public Comments
4:00 Adjourn

Status: The meeting will be open to public participation with a 15-minute public comment period on Monday, August 6 at 3:45 p.m. EDT. The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by July 30, 2012 to provide sufficient time for Board review. Written comments received after July 30, 2012, will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Elizabeth Ban, Designated Federal Officer at 301–734–1082 or *Elizabeth.Ban@noaa.gov* by July 27, 2012.

Dated: July 6, 2012.

Andy Baldus,

Acting Chief Financial Officer/Acting Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–17040 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC100

Marine Mammals; File No. 17115

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that James Lloyd-Smith, Department of Ecology and Evolutionary Biology, University of California, Los Angeles, 610 Charles E. Young Dr. South, Box 723905, Los Angeles, California 90095–7239, has applied in due form for a permit to conduct research on California sea lions (*Zalophus californianus*).

DATES: Written, telefaxed, or email comments must be received on or before August 13, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17115 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

To better understand the dynamics of leptospirosis in the California sea lions, the applicant requests a scientific research permit to investigate exposure to and shedding of leptospirosis in this species, with the long-term goal of understanding the mechanisms underlying recurrent and deadly epizootics of leptospirosis in California sea lions. By analyzing data collected from wild caught, free-ranging sea lions and comparing it to data from stranded sea lions, the applicant aims to establish how seroprevalence and incidence data gathered from stranded animals can be scaled up to reflect the patterns occurring in the entire wild population of sea lions. Up to 5,100 California sea lions may be taken annually from Año Nuevo Island including 20 by capture and release, 80 by capture/sample/release and 5,000 by incidental disturbance. Procedures include: Capture (stalking, hoop net); restraint (board, cage, hand, net); anesthesia (gas); mark (flipper tag); measure; and sample (blood, urine, vibrissae). Up to 3,000 northern elephant seals (*Mirounga angustirostris*) and up to 60 Pacific harbor seals (*Phoca vitulina*) may be taken annually due to incidental disturbance. In addition, up to four

California sea lions may be taken by unintentional mortality during the requested 5-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 6, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17036 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patents for Humanity Program (formerly Humanitarian Program).

Form Number(s): None.

Agency Approval Number: 0651–0066.

Type of Request: Revision of a currently approved collection.

Burden: 4,010 hours annually.

Number of Respondents: 1,010 responses per year, with an estimated 333 (33%) submitted by small entities.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately four hours to complete the humanitarian program application and one hour to complete the petition to extend the redemption period, depending on the nature of the information. These estimated times include gathering the necessary information, preparing the application or petition and any supplemental supporting materials, and submitting the completed request.

Needs and Uses: The information is used by the public to apply for participation in the Patents for Humanity Program and to provide the USPTO with their contact information, which the USPTO uses to notify applicants that they have been selected for an award. Certificate holders also use the information to petition the USPTO to extend the redemption period of the certificate after it expires.

External judges and the selection committee use the information collected from the humanitarian applications to make recommendations for award recipients, while the USPTO uses the information to award certificates to the selected recipients. The USPTO also uses the information collected from the petitions to grant extensions of the redemption period for the certificate in question.

After the humanitarian program applications are screened for inappropriate material, they will be made publicly available.

Affected Public: Businesses or other for-profits, non-profit institutions, and individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at www.reginfo.gov.

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov*. Include ''0651–0066 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 13, 2012 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: July 9, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–17000 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2012–0028]

Trademark Board Manual of Procedure, Third Edition, Revision 1

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') issued the third edition, revision 1, of the *Trademark Board Manual of Procedure* (''TBMP''), and made available an archived copy of the May 6, 2011 third edition, on June 19, 2012.

ADDRESSES: The USPTO prefers that any suggestions for improving the form and content of the TBMP be submitted via electronic mail message to *TBMPFederalRegisterComments@uspto.gov*. Written comments may also be submitted by mail addressed to: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313–1451, marked to the attention of Cheryl Butler, Senior Attorney and Editor, *Trademark Board Manual of Procedure,* or by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building–East Wing, 600 Dulany Street, Alexandria, Virginia, marked to the attention of Cheryl Butler, Senior Attorney and Editor, *Trademark Board Manual of Procedure*.

FOR FURTHER INFORMATION CONTACT: Cheryl Butler, Senior Attorney, Trademark Trial and Appeal Board, by telephone at (571) 272–4259.

SUPPLEMENTARY INFORMATION: On June 19, 2012, the USPTO issued the first revision of the third edition of the TBMP. The TBMP provides Trademark Trial and Appeal Board (''TTAB'') judges and attorneys, trademark applicants and registrants, and attorneys and representatives for trademark applicants and registrants a comprehensive reference on the practices and procedures for *inter partes* and *ex parte* proceedings before the TTAB. The guidance provided by the manual does not have the force and effect of law. Its guidelines have been developed as a matter of internal Office management and are not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. While following the guidelines in the manual will aid parties and their attorneys in navigating the procedures applicable to *inter partes* cases, parties and their attorneys are also free to discuss and agree to various

alternative processes that may prove more efficient and economical.

The third edition, revision 1, incorporates TTAB practice, a minor change to the Trademark Act, changes to the Federal Rules of Civil Procedure and Federal Rules of Evidence where relevant, and case law reported between November 15, 2010, and March 2, 2012. The policies stated in this revision supersede any previous policies stated in prior editions or any other statement of USPTO policy, to the extent that there is any conflict. The TBMP may be viewed or downloaded free of charge from the TTAB home page of the USPTO Web site at the address: *http://www.uspto.gov/trademarks/process/appeal/index.jsp*.

Dated: July 3, 2012.

Teresa Stanek Rea,

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

[FR Doc. 2012–17019 Filed 7–11–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Postsecondary Education; Survey of Post-Graduate Outcomes for International Education Fellowship Recipients

SUMMARY: This survey will focus on the post-graduate outcomes of students who received international education fellowships.

DATES: Interested persons are invited to submit comments on or before September 10, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04880. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Post-Graduate Outcomes for International Education Fellowship Recipients.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 4,595.

Total Estimated Number of Annual Burden Hours: 797.

Abstract: The Higher Education Opportunity Act of 2008, Section 601 requires that: ''The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this title to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.'' The first cohort of students to be surveyed will be the Foreign Language and Area Studies fellows and the Institute for International Public Policy fellows. The survey will be expanded to other grantees in subsequent years. This is a longitudinal survey that will be conducted every two years for a total of eight years for each cohort. Grantees will administer the survey to all fellows in these selected programs after they have graduated from the degree program they were enrolled in when they received their fellowship. Grantees will submit the results of the survey to the International for Foreign Language Education (IFLE) office within the U.S. Department of Education. IFLE will analyze the data and provide a report that will be available to the public. The results will be used to assess program impact.

Dated: July 6, 2012.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–16981 Filed 7–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.033, 84.038, 84.063, and 84.268]

Free Application for Federal Student Aid (FAFSA); 2013–2014 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Free Application for Federal Student Aid (FAFSA) Information to be Verified for the 2013–2014 award year.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify. The notice also specifies what documentation is acceptable to the Secretary for verifying FAFSA information.

Through this notice, the Secretary announces for the 2013–2014 award year the FAFSA information subject to, and the documentation acceptable for, verification.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., room 8053, Washington, DC 20006. Telephone: (202) 502–7890.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following chart lists for the 2013–2014 award year the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse, may be required to verify under 34 CFR 668.56. The chart also lists acceptable documentation that must be provided under § 668.57 to an institution for that information. The Secretary will include on the applicant's Institutional Student Information Record (ISIR) flags that will indicate which FAFSA information needs to be verified for that applicant and, if appropriate, the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to the institution for further instructions for completing the verification process.

FAFSA information	Acceptable documentation
Income information for tax filers[1]	
• Adjusted Gross Income (AGI). • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Credits.	(1) Tax year 2012 information that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) (commonly referred to as the IRS Data Retrieval Tool) that has not been changed after the information was obtained from the IRS; or (2) A transcript[2] obtained from the IRS that lists tax account information of the tax filer for tax year 2012. (§ 668.57(a))
Income information for tax filers with special circumstances[1] • Adjusted Gross Income (AGI). • U.S. Income Tax Paid. • Untaxed Portions of Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Credits.	For a student or the parent(s) of a dependent student whose income is used in the calculation of the applicant's expected family contribution, who filed a joint income tax return and is separated, divorced, widowed, or married to someone other than the individual included on the joint income tax return— (1) A transcript[2] obtained from the IRS that lists tax account information of the tax filer(s) for tax year 2012; and (2) A copy of IRS Form W–2[3] for each source of employment income received for tax year 2012. For an individual who is required to file a 2012 IRS income tax return and has been granted a filing extension by the IRS— 1(a) A copy of IRS Form 4868, ''Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,'' that the individual filed with the IRS for tax year 2012; or (b) A copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time for tax year 2012; and 2(a) A copy of IRS Form W–2[3] for each source of employment income received for tax year 2012; and (b) If self-employed, a signed statement certifying the amount of the AGI and the U.S. income tax paid for tax year 2012. **Note:** An institution may request that an individual granted a filing extension submit tax information using the IRS Data Retrieval Tool, or by obtaining a transcript[2] from the IRS that lists tax account information for tax year 2012 after the income tax return is filed. If an institution receives the transcript, it must verify the income information of the tax filer(s). (§ 668.57(a))
Income information for nontax filers • Income earned from work.	For an individual that has not filed and, under IRS rules or other applicable government agency rules, is not required to file a 2012 income tax return— (1) A signed statement certifying— (a) That the individual has not filed and is not required to file an income tax return for tax year 2012; and (b) The sources of income earned from work as reported on the FAFSA and amounts of income from each source for tax year 2012 that is not reported on IRS Form W–2; and (2) A copy of IRS Form W–2[3] for each source of employment income received for tax year 2012. (§ 668.57(a))
• Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if: • For a dependent student, the household size reported on the FAFSA is two and the parent is single, separated, divorced, or widowed; or the household size reported is three if the parents are married; or • For an independent student, the household size reported on the FAFSA is one and the applicant is single, separated, divorced, or widowed; or the household size reported is two if the applicant is married. (§ 668.57(b)).
• Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, listing the name and age of each household member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2013–2014 award year and the name of that educational institution.

FAFSA information	Acceptable documentation
	(2) If an institution has reason to believe that an applicant's FAFSA information, or the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant that the household member in question is, or will be, attending that institution on at least a half-time basis unless— (a) The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or (b) The institution has information indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the reported number of household members enrolled at least half-time in eligible postsecondary institutions is one. (§ 668.57(c))
• Supplemental Nutrition Assistance Program (SNAP-Food Stamps).	(1) A statement signed by the applicant or, if the applicant is a dependent student, by one of the applicant's parents, affirming that SNAP–Food Stamps benefits were received by someone in the household during the 2011 and/or 2012 calendar years. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the receipt of SNAP-Food Stamps benefits is inaccurate, the institution must obtain documentation from the agency that issued the SNAP-Food Stamps benefits. (§ 668.57(d))
• Child Support Paid	(1) A statement signed by the applicant or parent, as appropriate, certifying— (a) The amount of child support paid; (b) The name of the person who paid the child support; (c) The name of the person to whom child support was paid; and (d) The names of the children for whom child support was paid. (2) If the institution has reason to believe that the information provided in the signed statement is inaccurate, the applicant must provide the institution with supporting documentation, such as— (a) A copy of the separation agreement or divorce decree that shows the amount of child support to be provided; (b) A statement from the individual receiving the child support showing the amount provided; or (c) Copies of the child support checks or money order receipts. (§ 668.57(d))
• High School Completion Status	(1) *High School Diploma* (a) A copy of the applicant's high school diploma; or (b) A copy of the applicant's final high school transcript that shows the date when the applicant completed secondary school education. **Note:** In cases where a copy of an applicant's high school diploma or final high school transcript is unavailable, e.g., the school is closed or located in a foreign country and the records are not available, an institution may accept alternative documentation to verify the applicant's high school completion status. (2) *Recognized Equivalent of a High School Diploma* (a) General Educational Development (GED) Certificate; (b) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma; (c) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or (d) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and has not completed high school but has excelled academically in high school, documentation from the high school that the student excelled academically in high school and documentation from the postsecondary institution that the student has met the formalized, written policies of the postsecondary institution for admitting such students. (3) *Homeschool* (a) A transcript or the equivalent, signed by the parent or guardian, that lists the secondary school courses completed by the applicant and documents the successful completion of a secondary school education; or (b) A secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent) provided for under State law. (§§ 600.2, 668.32(e)(1) and (e)(4))
• Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity—

FAFSA information	Acceptable documentation
	(a) A valid government-issued photo identification, such as but not limited to a driver's license, non-driver's license, military identification or passport; and (b) A signed statement certifying that the Federal student financial assistance received will only be used for educational purposes to pay the cost of attending that institution for the 2013–2014 award year. (2) For documentation presented in person, an institution must maintain, an annotated copy of the identification submitted by the applicant that includes— (a) The date the documentation used to verify the applicant's identity was received; and (b) The name of the institutionally-authorized individual that obtained the documentation from the applicant. (3) If an applicant is unable to appear in person, he or she must provide the institution with— (a) A copy of a valid government-issued photo identification, such as but not limited to a driver's license, non-driver's license, military identification or passport; and (b) An original notarized statement signed by the applicant certifying that the Federal student financial assistance received will only be used for educational purposes to pay the cost of attending that institution for the 2013–2014 award year. (§ 668.57(d))

[1] A tax filer that filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, must use the income information (converted to U.S. dollars) from the lines of that form that corresponds most closely to the income information reported on a U.S. income tax return.

[2] If an institution determines, consistent with guidance that the Secretary may provide, that obtaining a transcript from the IRS is not possible, the institution may, consistent with the Secretary's guidance, accept a copy of the 2012 income tax return. The copy must include the signature of the tax filer or of one of the filers of a joint income tax return; or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number. If a copy of the 2012 income tax return is not available the institution must accept—

(a) A copy of IRS Form W–2 (see footnote 3) for each source of employment income received for tax year 2012, and if self-employed, a signed statement certifying the amount of AGI and taxes paid for tax year 2012; or

(b) A signed statement by an individual that has filed an income tax return with a government of a U.S. territory or commonwealth or a foreign central government certifying the amount of AGI and taxes paid for tax year 2012.

[3] If an individual who is required to submit an IRS Form W–2 is unable to obtain one in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason that the IRS Form W–2 is not available in a timely manner.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

- *2013–2014 Application and Verification Guide.*
- *2013–2014 ISIR Guide.*
- *2013–2014 SAR Comment Codes and Text.*
- *2013–2014 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

You may access these publications at the Information for Financial Aid Professionals Web site at *www.ifap.ed.gov.*

Electronic Access to This Document: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe's Portable Document Format (PDF). To view PDF documents, you must have the Adobe Acrobat Reader, which is available for free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: July 9, 2012.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–17038 Filed 7–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OVAE–0014]

Notice Reopening the Request for Information (RFI) on Strategies for Improving Outcomes for Disconnected Youth

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice reopening comment period.

SUMMARY: On June 4, 2012, we published in the **Federal Register** (77 FR 32959) an RFI that established a July 5, 2012, deadline for the submission of written comments. We are reopening the public comment period to give interested parties additional time to submit written comments.

DATES: Written comments must be received by July 31, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the

Docket ID and the term ''Performance Partnership Response'' at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use This Site.''

• *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Annie Blackledge, Attention: Improving Outcomes for Disconnected Youth RFI, U.S. Department of Education, 400 Maryland Avenue SW., room 11089, Potomac Center Plaza, Washington, DC 20202–7241.

• *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Meg Massey by email: *mmassey@omb.eop.gov;* or Annie Blackledge by email: *Annie.Blackledge@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2012, we published in the **Federal Register** (77 FR 32959) an RFI notice. That notice established a July 5, 2012, deadline for the submission of comments on strategies for improving outcomes for disconnected youth. We are reopening the comment period for written comments in response to the RFI notice and establishing a new July 31, 2012 comment deadline. We are reopening the comment period to provide additional time for State and local agencies and other interested parties to respond to the questions in the June 4, 2012, Federal Register notice (77 FR 32959) with recommendations on effective approaches for improving outcomes for disconnected youth by working across Federal, State, and local community programs and systems that provide services to those youth.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 9, 2012.

Johan Uvin,

Delegated Authority to Perform the Functions and Duties of the Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2012–17035 Filed 7–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–115–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: FPA Section 203 Application of KCP&L Greater Missouri Operations Company and Request for Expedited Action.

Filed Date: 6/29/12.

Accession Number: 20120629–5289.

Comments Due: 5 p.m. ET 7/20/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1532–001; ER10–1529–001.

Applicants: Entergy Nuclear Palisades, LLC, Northern Iowa Windpower, LLC.

Description: Updated Market Power Analysis of Entergy Nuclear Palisades, LLC, et al.

Filed Date: 6/29/12.

Accession Number: 20120629–5287.

Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–1790–006; ER10–276–002; ER11–3325–002.

Applicants: BP Energy Company, Whiting Clean Energy, Inc., Rolling Thunder I Power Partners, LLC.

Description: Updated market power analysis for Central region of BP Energy Company, Rolling Thunder I Power Partners, LLC, and Whiting Clean Energy, Inc.

Filed Date: 6/29/12.

Accession Number: 20120629–5283.

Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2172–009; ER11–2016–004; ER10–2184–009; ER10–2183–006; ER10–1048–006; ER10–2176–010; ER10–2192–009; ER11–2056–003; ER10–2178–009; ER10–2174–009; ER11–2014–006; ER11–2013–006; ER10–3308–008; ER10–1017–005; ER10–1020–005; ER10–1145–005; ER10–1144–004; ER10–1078–005; ER10–1079–005; ER10–1080–005; ER11–2010–006; ER10–1081–005; ER10–2180–009; ER11–2011–005; ER11–2009–005; ER11–3989–004; ER10–1143–005; ER11–2007–004; ER11–2005–006.

Applicants: Exelon New Boston LLC, Constellation Energy Commodities Group, Inc., Commonwealth Edison Company, Baltimore Gas and Electric Company, Wind Capital Holdings, LLC, CR Clearing, LLC, Constellation Power Source Generation, Inc., Constellation NewEnergy, Inc., Constellation Energy Commodities Group Maine, LLC, Exelon Framingham LLC, Exelon New England Power Marketing, LP, PECO Energy Company, Exelon West Medway, LLC, Exelon Generation Company, LLC, Exelon Energy Company, CER Generation, LLC, Exelon Wyman, LLC, CER Generation II, LLC, Handsome Lake Energy, LLC, Constellation Mystic Power, LLC, Cassia Gulch Wind Park, Michigan Wind 1, LLC, Tuana Springs Energy, LLC, Harvest Windfarm, LLC, Exelon Wind 4, LLC, Criterion Power Partners, LLC, Cow Branch Wind Power, LLC, Michigan Wind 2, LLC.

Description: Updated Market Power Analysis of Baltimore Gas and Electric Company, *et al.*

Filed Date: 6/29/12.

Accession Number: 20120629–5290.

Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–2181–012; ER10–2179–012; ER10–2182–012.

Applicants: R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, Calvert Cliffs Nuclear Power Plant, LLC.

Description: Change in Status Filing of CENG Nuclear Entities.

Filed Date: 6/29/12.

Accession Number: 20120629–5284.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER10–2794–004; ER10–2849–003; ER11–2028–004.

Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (NY), LLC.

Description: Updated Market Power Analysis for the Central Region of EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, and EDF Industrial Power Services (IL), LLC.

Filed Date: 6/29/12.
Accession Number: 20120629–5282.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–360–001.

Applicants: New York Independent System Operator, Inc.

Description: NYISO Compliance Filing—Market Mitigation Measures for New Capacity Zones to be effective 9/1/2012.

Filed Date: 6/29/12.
Accession Number: 20120629–5257.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–1926–000.

Applicants: Independence Electricity.

Description: Amendment to Application of Independence Electricity for Market-Based Rate Authority advising of a Corporate Name Change to Union Atlantic Electricity.

Filed Date: 6/29/12.
Accession Number: 20120629–5039.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2169–000.

Applicants: New England Power Pool Participants Committee.

Description: Jul 2012 Membership Filing to be effective 6/1/2012.

Filed Date: 6/29/12.
Accession Number: 20120629–5235.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2170–000.

Applicants: International Transmission Company.

Description: Filing of Belle River Transmission Ownership and Operating Agreement to be effective 8/29/2012.

Filed Date: 6/29/12.
Accession Number: 20120629–5254.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2171–000.

Applicants: Southern California Edison Company.

Description: WDAT Service Agreement with SCE–RAP for CREST to be effective 6/30/2012.

Filed Date: 6/29/12.
Accession Number: 20120629–5255.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–2172–000.

Applicants: San Diego Gas & Electric Company.

Description: SDGE 2012 Out of Cycle TACBAA Rate Filing to be effective 9/1/2012.

Filed Date: 6/29/12.
Accession Number: 20120629–5258.
Comments Due: 5 p.m. ET 7/20/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–46–000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: Application of Entergy Gulf States Louisiana, LLC, for authorization under FPA Section 204 to consent to borrowings, etc.

Filed Date: 6/29/12.
Accession Number: 20120629–5286.
Comments Due: 5 p.m. ET 7/20/12.

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 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: July 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16955 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–83–000.

Applicants: AV Solar Ranch 1, LLC.

Description: Self-Certification of EG of AV Solar Ranch 1, LLC.

Filed Date: 7/2/12.
Accession Number: 20120702–5182.
Comments Due: 5 p.m. ET 7/23/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1817–003; ER10–1819–003; ER10–1820–005; ER10–1818–002.

Applicants: Southwestern Public Service Company, Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado.

Description: Triennial Market Power Analysis and Change in Status Report of Southwestern Public Service Company, *et al.*

Filed Date: 6/29/12.
Accession Number: 20120629–5294.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER10–1827–002; ER10–1825–002.

Applicants: Cleco Power LLC, Cleco Evangeline LLC.

Description: Cleco Power LLC, et al. submits Triennial Market Power Analysis.

Filed Date: 7/2/12.
Accession Number: 20120702–5314.
Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER10–3069–003; ER10–3070–003.

Applicants: Alcoa Power Generating, Inc., Alcoa Power Marketing LLC.

Description: Updated Market Power Analysis of Alcoa Power Generating Inc. and Alcoa Power Marketing LLC.

Filed Date: 6/29/12.
Accession Number: 20120629–5293.
Comments Due: 5 p.m. ET 8/28/12.

Docket Numbers: ER12–1339–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35: Revised Rate Schedule No. 192 of Carolina Power and Light Company to be effective 7/2/2012.

Filed Date: 7/2/12.
Accession Number: 20120702–5264.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–1340–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35: Revised Rate Schedule No. 193 of Carolina Power and Light Company to be effective 7/2/2012.

Filed Date: 7/2/12.
Accession Number: 20120702–5267.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–1341–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35: Revised Rate Schedule No. 194 of Carolina Power and Light Company to be effective 7/2/2012.

Filed Date: 7/2/12.
Accession Number: 20120702–5271.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–1342–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits tariff filing per 35: PSA

Compliance Filing July 2 Effective Date to be effective 7/2/201.
Filed Date: 7/2/12.
Accession Number: 20120702–5252.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–1408–002.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Amendment to RY3 WDS filing to be effective 4/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5002.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–1455–001.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35: Rev. to MR1 in Comp. with Order Accept Tariff Revisions to be effective 8/31/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5200.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–1926–001.
Applicants: Union Atlantic Electricity.
Description: Union Atlantic Electricity submits tariff filing per 35.17(b): Amended MBR Tariff Filing to be effective 6/30/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5237.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2174–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Filing of First Revised Service Agreement No. 2924; Queue No. W2–016 to be effective 6/7/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5031.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2175–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35: LGIA with Mescalero Ridge to be effective 6/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5109.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2176–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1906R1 Municipal Energy Agency of Nebraska NITSA NOA to be effective 6/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5123.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2177–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): PJM Service Agreement No. 3346—NITSA among ODEC and PJM to be effective 9/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5129.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2178–000.
Applicants: AV Solar Ranch 1, LLC.
Description: AV Solar Ranch 1, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 7/3/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5136.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2179–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue Position #None—Original Service Agreement No. 3345 to be effective 6/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5239.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2180–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Queue Position W4–082; Original Service Agreement No. 3326 to be effective 6/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5244.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2181–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement No. 3333; Queue No. W3–003 to be effective 6/7/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5266.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2182–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): BPA NITSA (Yakama) to be effective 8/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5269.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2183–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): PJM Service Agreement No. 3347—NITSA among NCEMC and PJM to be effective 9/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5273.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2184–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Formula Rate Wholesale Sales Tariff revisions to be effective 9/1/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5276.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2185–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule FERC No. 90 revisions to be effective 9/1/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5000.
Comments Due: 5 p.m. ET 7/24/12.
Docket Numbers: ER12–2186–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Cambridge Energy Alliance Resource Terminations.
Filed Date: 7/2/12.
Accession Number: 20120702–5321.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2187–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits Ameresco DR LLC Resource Termination.
Filed Date: 7/2/12.
Accession Number: 20120702–5322.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2188–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Ampersand Energy Partners LLC Resource Terminations.
Filed Date: 7/2/12.
Accession Number: 20120702–5323.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2189–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Commonwealth of Massachusetts Resource Terminations.
Filed Date: 7/2/12.
Accession Number: 20120702–5324.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2190–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. CLP Resource Terminations.
Filed Date: 7/2/12.
Accession Number: 20120702–5325.
Comments Due: 5 p.m. ET 7/23/12.
Docket Numbers: ER12–2191–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Constellation Resource Terminations.
Filed Date: 7/2/12.

Accession Number: 20120702–5326.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–2192–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. EnerNOC Resource Terminations.
Filed Date: 7/2/12.
Accession Number: 20120702–5327.
Comments Due: 5 p.m. ET 7/23/12.

Docket Numbers: ER12–2194–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.37: Updated Market Power Analysis to be effective 8/28/2012.
Filed Date: 7/2/12.
Accession Number: 20120702–5336.
Comments Due: 5 p.m. ET 7/23/12.

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 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: July 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16957 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2074–002; ER10–2097–004.

Applicants: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.

Description: Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company submits their Triennial Market Power Update for the Southwest Power Pool Region pursuant to Order No. 697.

Filed Date: 6/28/12.
Accession Number: 20120702–0004.
Comments Due: 5 p.m. ET 8/27/12.

Docket Numbers: ER10–2172–010; ER11–2016–005; ER10–2184–010; ER10–2183–007; ER10–1048–007; ER10–2176–011; ER10–2192–010; ER11–2056–004; ER10–2178–010; ER10–2174–010; ER11–2014–007; ER11–2013–007; ER10–3308–009; ER10–1017–006; ER10–1020–006; ER10–1145–006; ER10–1144–005; ER10–1078–006; ER10–1079–006; ER10–1080–006; ER11–2010–007; ER10–1081–006; ER10–2180–010; ER11–2011–006; ER11–2009–006; ER11–3989–005; ER10–1143–006; ER11–2780–003; ER11–2007–005; ER12–1223–004; ER11–2005–007.

Applicants: Baltimore Gas and Electric Company, Cassia Gulch Wind Park LLC, CER Generation, LLC, CER Generation II, LLC Commonwealth Edison Company, Constellation Energy Commodities Group, Inc., Constellation Energy Commodities Group Maine, LLC, Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc., Cow Branch Wind Power, L.L.C., CR Clearing, LLC, Criterion Power Partners, LLC, Exelon Energy Company, Exelon Framingham LLC, Exelon Generation Company, LLC, Exelon New Boston, LLC, Exelon New England Power Marketing, LP, Exelon West Medway, LLC, Exelon Wind 4, LLC, Exelon Wyman, LLC Handsome Lake Energy, LLC, Harvest Windfarm, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, PECO Energy Company, Safe Harbor Water Power Corporation, Tuana Springs Energy, LLC, Wildcat Wind, LLC, Wind Capital Holdings, LLC.

Description: Notice of Non-Material Change in Status of Exelon MBR Entities.
Filed Date: 6/29/12.
Accession Number: 20120629–5297.
Comments Due: 5 p.m. ET 7/20/12.

Docket Numbers: ER12–1989–001.
Applicants: SunPower Corporation, Systems.
Description: SunPower Corporation, Systems submits tariff filing per 35.17(b): SunPower Corporation, Systems MBR Filing to be effective 7/7/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5080.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2195–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii) FTR Annual and Monthly Auction Changes—Part 1 of 2 to be effective 10/1/2011.
Filed Date: 7/3/12.
Accession Number: 20120703–5073.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2195–001.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.17(b): Amendment to FTR Annual and Monthly Changes—Part 1 of 2 to be effective 10/1/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5113.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2196–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii) Cancellation Submission of 1522R1 Kansas City Power & Light Co. LGIA to be effective 6/5/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5093.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2197–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii) KEPCo, Revs to Attachment A—Delivery Points (09/01/12) to be effective 9/1/2012.
Filed Date: 7/3/12.
Accession Number: 20120703–5115.
Comments Due: 5 p.m. ET 7/24/12.

Docket Numbers: ER12–2198–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination for Conservation Services Group.
Filed Date: 7/3/12.
Accession Number: 20120703–5119.
Comments Due: 5 p.m. ET 7/24/12.

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: July 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16958 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–789–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Petition for Waiver of Tariff Provision of Maritimes & Northeast Pipeline, L.L.C.

Filed Date: 6/5/12.

Accession Number: 20120605–5025.

Comments Due: 5 p.m. ET 7/12/12.

Docket Numbers: RP12–852–000.

Applicants: MIGC LLC.

Description: MIGC LLC Fuel Filing to be effective 8/1/2012.

Filed Date: 7/2/12.

Accession Number: 20120702–5338.

Comments Due: 5 p.m. ET 7/16/12.

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.

Filings in Existing Proceedings

Docket Numbers: RP12–295–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 07/03/12—Allocations and Curtailment Conditions to be effective 7/6/2012.

Filed Date: 7/3/12.

Accession Number: 20120703–5168.

Comments Due: 5 p.m. ET 7/16/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–16954 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of New York Independent System Operator, Inc.:

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

July 18, 2012, 10 a.m. to 4 p.m., Local Time.

Inter-area Planning Stakeholder Advisory Committee

August 27, 2012, 9 a.m. to 12 p.m., Local Time (teleconference only).

The above-referenced Joint Inter-Regional Planning Task Force/Electric System Planning Working Group meeting will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced Inter-area Planning Stakeholder Advisory Committee meeting will be held via teleconference.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.nyiso.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: July 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16993 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–83–000]

CAlifornians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey, v. Massachusetts Department of Public Utilities, Massachusetts Electric Company, Nantucket Electric Company, Cape Wind Associates, LLC; Notice of Petition for Enforcement and Complaint

Take notice that on July 1, 2012, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), CAlifornians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey (collectively Petitioner) filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Massachusetts Department of Public Utilities, Massachusetts Electric Company, Nantucket Electric Company, and Cape Wind Associates, LLC (collectively Respondent) to ensure that PURPA regulations are properly and lawfully implemented by Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 23, 2012.

Dated: July 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16996 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–471–000]

Northwest Pipeline GP; Notice of Intent To Prepare an Environmental Assessment for the Proposed South Seattle Delivery Lateral Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the South Seattle Delivery Lateral Expansion Project involving construction and operation of facilities by Northwest Pipeline GP (Northwest) in King County, Washington. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 6, 2012.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

FERC Public Scoping Meeting, South Seattle Delivery Lateral Expansion Project, July 30, 2012 at 7:00 p.m., Hilton Garden Inn Seattle/Renton, 1801 East Valley Road, Renton, WA 98057.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Northwest provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Northwest proposes to upgrade 4.0 miles of natural gas pipeline from 10- to 16-inch-diameter in King County, Washington. Northwest proposes to remove the existing 10-inch-diameter segment and replace it with the 16-inch-diameter pipeline in the same ditch. However, at the existing Cedar River crossing it would abandon in place an 800-foot-long segment and install the new pipeline 50 feet offset from the abandoned segment. In addition, Northwest proposes to remove a pig[1] launcher, install two new pig launchers and one pig receiver, and upgrade miscellaneous aboveground facilities. The project would provide about 74,850 dekatherms of natural gas per day to meet demand in the south Seattle market area.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 76 acres of land; 96 percent of the disturbed area would be within Northwest's existing right-of-way. Following construction, Northwest would utilize its existing right-of-way for permanent operation of the project's facilities. It would however, need to acquire 4.0 acres of new right-of-way for operation of the aboveground facilities and the pipeline associated with the Cedar River crossing.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. At this time, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have expressed an interest in participating as cooperating agencies.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with Washington State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Alternative methods and locations for the crossing of the Cedar River;
- Impacts on threatened and endangered species including Chinook salmon, steelhead, and bull trout; and
- Minimization of impacts on landowners during construction within residential neighborhoods.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 6, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12–471–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–471). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16994 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–480–000]

Merit Energy Company; Notice of Petition for Declaratory Order

Take notice that on June 27, 2012, Merit Energy Company (Merit), under Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2012) filed a Petition for Declaratory Order, requesting the Commission declare that Merit's proposed pipeline, which will consist of one new 4-mile segment and one existing 10-mile segment, is a non-jurisdictional plant inlet pipeline, integrally and solely related to the non-jurisdictional processing activity at the Painter Plant.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 27, 2012.

Dated: July 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16995 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Notice of Technical Conferences

Take notice that the Federal Energy Regulatory Commission (Commission) staff will hold regional technical conferences on Coordination between Natural Gas and Electricity Markets. The regional technical conferences will be held on the following dates and in the following cities:[1]

Central [2]—August 6, 2012, St. Louis, MO

Northeast [3]—August 20, 2012, Boston, MA

Southeast [4]—August 23, 2012, Washington, DC (FERC HQ)

West [5]—August 28, 2012, Portland, OR

Mid-Atlantic [6]—August 30, 2012, Washington, DC (FERC HQ)

The regional technical conferences will be open for the public to attend. Commission members will participate in the conferences.

On February 15, 2012, in the above-mentioned docket, a notice was issued requesting comments regarding gas-electric interdependence. The commenters raised a wide variety of issues regarding gas-electric interdependence. Many of the commenters asserted that those issues differed on a regional basis. The regional technical conferences will discuss the various aspects of gas-electric interdependence and coordination, as well as ways to improve communication and coordination between the two industries.

Each conference will be organized as a roundtable discussion of the following topics: (1) Communications/coordination/information sharing; (2) scheduling; (3) market structures and rules; and (4) reliability concerns. Time permitting, comments or questions from those attending the conference, but not participating in the roundtable, will be permitted. Subsequent notices will be issued specifying the time, venue, and agenda for each conference.

Those interested in attending a conference are encouraged to register by close of business, July 19, 2012. You may register at the following Web page: *http://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp*. Those also interested in participating in a roundtable should notify the Commission by close of business on the same day by completing an online form identifying at which conference they wish to participate: *http://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-speaker-form.asp*. Due to time and seating constraints, we may not be able to accommodate all those interested in participating in the roundtables.

Information on the conferences will also be posted on the Web site *http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp*, as well as the Calendar of Events on the Commission's Web site, *http://www.ferc.gov*, prior to the conferences.

Commission conferences are accessible under section 508 of the

[1] We recognize that due to the long lines of some of the interstate pipelines, natural gas pipeline infrastructure may not neatly fit into these divisions, but find these divisions reasonable for discussing gas-electric coordination issues.

[2] For purposes of these conferences, the Central region is largely defined by the corporate boundaries of the organized wholesale electric markets of Midwest Independent Transmission System Operator Inc. (MISO), Southwest Power Pool, Inc. (SPP) and Electric Reliability Council of Texas (ERCOT). While we recognize we do not have Federal Power Act jurisdiction over the rates or terms of service in wholesale electricity markets doing business wholly within the state of Texas in ERCOT events in Texas affect, and are affected by, gas-electric coordination issues in other geographic areas and opening these discussions to all participants will permit a broader and more inclusive examination of all the relevant issues.

[3] ISO New England, Inc. (ISO–NE).

[4] Southern Company, Duke and Progress Energy, TVA, and other areas south of PJM Interconnection, L.L.C. (PJM) and East of SPP and ERCOT.

[5] The Western Interconnection.

[6] New York Independent System Operator Inc. (NYISO), PJM and related areas.

Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about the regional technical conferences, please contact:

Pamela Silberstein, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8938, *Pamela.Silberstein@ferc.gov*.

Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Dated: July 5, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16997 Filed 7–11–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a teleconference meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this teleconference is to discuss specific topics of relevance for consideration by the Committee in order to provide advice and insights to the Agency on environmental policies and programs that affect and engage agriculture and rural communities.

DATES: The Farm, Ranch, and Rural Communities Committee will hold a public teleconference on Wednesday, August 1, 2012, from 1:00 p.m. until 2:30 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov,* 202–564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the teleconference, make brief oral comments, or provide a written statement to the FRRCC must contact Alicia Kaiser, Designated Federal Officer, at *kaiser.alicia@epa.gov* or 202–564–7273 by July 27, 2012.

Meeting Access: For information on access or services for individuals with disabilities or to request accommodations please contact Alicia Kaiser at *kaiser.alicia@epa.gov* or 202–564–7273, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 3, 2012.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. 2012–17025 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9699–7]

Notification of Public Teleconferences of the Science Advisory Board Animal Feeding Operations Emission Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Animal Feeding Operations Emission Review Panel (AFO Panel) to discuss additional EPA data and the Panel's draft advisory report regarding EPA draft methodologies for estimating emissions from animal feeding operations.

DATES: The SAB AFO Panel public teleconference will be held on August 13, 2012, from 1:00 p.m. to 5:00 p.m. (Eastern Time). The follow-up public teleconference of the SAB AFO Panel will be held on October 24, 2012, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public teleconferences may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134 or via email at *hanlon.edward@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB AFO Panel will hold a public teleconference to review additional data and a public teleconference to discuss the Panel's draft advisory report regarding the EPA documents, ''Draft—Development of Emissions Estimating Methodologies for Broiler Animal Feeding Operations'' and ''Draft—Development of Emissions Estimating Methodologies for Lagoons and Basins at Swine and Dairy Animal Feeding Operations'' (February 2012 draft). The SAB Panel will provide advice through the chartered SAB and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background information about this SAB review can be found on the SAB Web site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/0/AE6639DD6B79360E852579A4004E5529?OpenDocument.* The SAB AFO Panel previously held a public meeting on March 14, 15 and 16, 2012 to discuss its review comments on the EPA Animal Feeding Operations emissions documents.

Technical Contacts: For technical questions and information concerning EPA's air emission estimating methodologies for animal feeding operations, please contact Mr. Larry Elmore of EPA's Office of Air Quality Planning and Standards by phone at (919) 541–5433, or via email at *elmore.larry@epa.gov.*

Availability of the Review Materials: The agenda and material in support of these teleconference calls will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal

advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB Panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation will be limited to three minutes per speaker. Interested parties should contact Mr. Edward Hanlon, DFO, in writing (preferably via email), at the contact information noted above, by August 6, 2012 to be placed on the list of public speakers for the August 13, 2012 teleconference, and by October 17, 2012 to be placed on the list of public speakers for the October 24, 2012 teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by August 6, 2012 for the August 13, 2012 teleconference, and by October 17, 2012 for the October 24, 2012 teleconference, so that the information may be made available to the Panel members for their consideration. Written statements should be supplied to the DFO in electronic format via email (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Edward Hanlon at (202) 564–2134 or via email at *hanlon.edward@epa.gov,* preferably at least ten days prior to the public teleconference(s) to give EPA as much time as possible to process your request.

Dated: July 3, 2012.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–17027 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2012–0554; FRL–9699–6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended ''CAA'' or the ''Act'', notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 12–cv–00013–RWR (D. D.C.). Plaintiff filed a complaint and a first amended complaint alleging that EPA failed to take timely action to approve, disapprove, or approve in part and disapprove in part the state implementation plan (''SIP'') submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina. The proposed consent decree establishes a deadline of November 30, 2012, for EPA to take action on the North Carolina SIP with respect to the reasonable further progress (''RFP'') for volatile organic compounds (''VOC'') and nitrogen oxides (''NO_X'') requirement and the South Carolina SIP with respect to the RFP for VOC and NO_X and emissions statements requirements. The proposed consent decree also establishes a deadline of May 1, 2013, for EPA to take action on the North Carolina SIP with respect to the reasonable area control technology (''RACT'') for NO_X.

DATES: Written comments on the proposed consent decree must be received by *August 13, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0554, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3244; fax number (202) 564–5603; email address: *hogan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel the Agency to take final action under sections 110(k)(2) and (3) of the CAA, 42 U.S.C. 7410(k)(2) and (3), on the SIP submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina. Specifically, the lawsuit seeks to compel the Agency to take final action, pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k), on the 1997 8-hour ozone nonattainment area requirements in the North Carolina SIP, including the emissions inventory, the RFP for VOC and NO_X, the RACT for NO_X for major sources, and the emissions statements. The lawsuit also seeks to compel the Agency to take final action pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k), on the 1997 8-hour ozone nonattainment area requirements in the South Carolina SIP, including the emissions inventory, the RFP for VOC and NO_X, and the emissions statements.

On April 24, 2012, EPA took final action to approve the SIP submittal submitted by North Carolina addressing the 1997 ozone NAAQS emissions statements requirement for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. 77 FR 24382. On May 4, 2012, EPA took final action to approve the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. 77 FR 26441. On May 18, 2012, EPA took final action to approve the SIP submittals submitted by South Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-

hour ozone nonattainment area. 77 FR 29540.

The proposed consent decree requires that, no later than November 30, 2012, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_X requirements for the Charlotte-Gastonia-Rock Hill area. The proposed consent decree also requires that, no later than November 30, 2012, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by South Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_X, and emissions statements requirements for the Charlotte-Gastonia-Rock Hill area. Finally, the proposed consent decree requires that, no later than May 1, 2013, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS RACT for NO_X for major sources requirement for the Charlotte-Gastonia-Rock Hill area.

On June 25, 2012, the EPA issued a direct final rule approving the South Carolina emissions statement. 77 FR 37812. The EPA indicated that the rule will take effect on August 24, 2012, unless EPA receives adverse comment by July 25, 2012, 77 FR 37813. In the event that adverse comment is received on the direct final rule, EPA will withdraw the direct final rule in order to address the comments and there will be no change to the deadlines and obligations contained in the proposed consent decree. However, in the event that adverse comment is not received on the direct final rule, the rule will take effect as scheduled. In the latter case, the EPA intends to remove from the proposed consent decree the obligation to act on the South Carolina emissions statement by November 30, 2012, as the EPA will have already satisfied that obligation.

The proposed consent decree requires that, following signature, EPA shall promptly deliver the notice to the Office of the Federal Register for publication in the **Federal Register** and shall thereafter provide a copy of the notice to Plaintiff within ten (10) days. After EPA fulfills its obligations under the proposed consent decree, the consent decree may be terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0554) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 5, 2012.

Patricia A. Embrey,

Acting Associate General Counsel.

[FR Doc. 2012–17026 Filed 7–11–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company Correction

This notice corrects a notice (FR DOC #2012–14579) published on page 35680 of this issue for Thursday, June 14, 2012.

Under the Federal Reserve Bank of Atlanta heading, the entry for Robert Roschman and the Robert Roschman Revocable Trust, Robert Roschman trustee, all of Fort Lauderdale, Florida, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. Robert Roschman Revocable Trust, Robert Roschman, trustee; the Lorrie Lei Roschman Revocable Trust, Lorrie Roschman, trustee; the Revocable Trust Created by Jeffrey S. Roschman, Jeffrey Roschman, trustee; CT Foundation, Betty Roschman, Roschman Restaurant Administration, and Kerry Roschman, all of Fort Lauderdale, Florida, to collectively retain 25 percent or more of the shares and thereby control of Giant Holdings, Inc., and Landmark Bank, N.A., both of Fort Lauderdale, Florida.

Comments on this application must be received by August 1, 2012.

Board of Governors of the Federal Reserve System, July 6, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–16984 Filed 7–11–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Security Bancorp, Searcy, Arkansas,* to increase its ownership from 9.6 percent to 9.9 percent through the purchase of additional common member units in CrossFirst Holdings, LLC, and thereby acquire shares of Cross First Bank, both of Leawood Kansas.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Yorktown Financial Holdings, Inc., Tulsa, Oklahoma,* to become a bank holding company through the acquisition of 100 percent of the voting shares of CNBO Bancorp, Inc., parent of Century Bank of Oklahoma, both in Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, July 6, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–16982 Filed 7–11–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Breast Cancer in Young Women, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Breast Cancer in Young Women, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through June 17, 2014.

For information, contact Temeika L. Fairley, Ph.D., Designated Federal Officer, Advisory Committee on Breast Cancer in Young Women, HHS, CDC, 4770 Buford Highway, NE., Mailstop K52, Atlanta, Georgia 30341, telephone 770/488–4518, fax 770/488–4760.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–17043 Filed 7–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5 p.m., August 29, 2012. 8:30 a.m.–12:30 p.m., August 30, 2012.

Place: CDC, 1600 Clifton Road NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

Online Registration Required: All CLIAC attendees are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at *http://wwwn.cdc.gov/cliac/default.aspx* by scrolling down and clicking the appropriate link under ''Meeting Registration'' (either U.S. Citizen Registration or Non-U.S. Citizen Registration) and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than August 22, 2012, for U.S. registrants and August 15, 2012, for international registrants.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary,

Department of Health and Human Services; the Assistant Secretary for Health; the Director, CDC; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the CLIAC standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods and the electronic transmission of laboratory information.

Matters To Be Discussed: The agenda will include agency updates from the CDC, the CMS, and the FDA; and presentations and discussions addressing activities of the Clinical Laboratory Integration into Health Care Collaborative (CLIHC); the Laboratory Medicine Best Practices (LMBP) Initiative; the Communication in Informatics Workgroup; and the topic of usability of electronic health records. Also discussed will be the potential need for educational materials and resources for sites that test under a Provider-performed Microscopy Certificate; and the increased use of culture-independent microbiology diagnostics and the impact on public health.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible.

Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Refer to the CLIAC Web site on the day of the meeting for materials. *http://wwwn.cdc.gov/cliac/cliac_meeting_all_documents.aspx*.

Note: If using a mobile device to access the materials, please verify the device's browser is able to download the files from the CDC's Web site before the meeting. Alternatively, the files can be downloaded to a computer and then emailed to the portable device. An internet connection, power source and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Science and Standards, Laboratory Science, Policy and Practice Program Office, Office of Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30333; telephone (404) 498–2741; fax (404) 498–2219; or via email at *NAnderson@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–17024 Filed 7–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 8:30 a.m.–5 p.m., Eastern Time, August 6, 2012.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone: (859) 334–4611, Fax: (859) 334–4619.

Status: Open to the public, but without an oral public comment period. To access by conference call dial the following information: 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific

validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: revisiting the Board's dose reconstruction review process; dose reconstruction program quality management and assurance activities, including an overview of contractor quality management system and an update on the results of NIOSH internal dose reconstruction blind reviews; dose reconstruction issues from NIOSH 10-year review, including review of resource impact of possible changes to efficiency process and plans for a NIOSH Division of Compensation Analysis and Support claimant favorability analysis; discussion of dose reconstruction cases under review (sets 8–9, cases with Category A findings from sets 10–13, Savannah River Site cases from sets 10–13); and pre-selection of set 16 dose reconstruction cases to be reviewed by the Board's technical support contractor.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone: (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email: *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–17041 Filed 7–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–190]

Revised Document Posted: NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2012, Correction

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: A notice of issuance of Final Guidance Publication was published in the **Federal Register** June 27, 2012, (77 FR 38297). This notice is corrected as follows:

On page 38297, the Docket number has been changed to NIOSH–190.

FOR FURTHER INFORMATION CONTACT: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C26, Cincinnati, OH 45226, Telephone (513) 533–8132, email *hazardousdrugs@cdc.gov*.

Dated: July 6, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–17002 Filed 7–11–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services Funding Opportunity: National HIV Program for Enhanced HIV/AIDS Screening and Engagement in Care

AGENCY: Indian Health Service, HHS

ACTION: Notice: correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on June 19, 2012, concerning Announcement Type: New. Funding Announcement Number: HHS–2012–IHS–OCPS–HIV–0001. Catalog of Federal Domestic Assistance Number: 93.933. The document contained five incorrect dates.

FOR FURTHER INFORMATION CONTACT: Dr. Charlene Avery, Director, Office of Clinical and Preventative Services, Indian Health Service, 801 Thompson Avenue, Suite 300, Reyes Building, Rockville, MD 20852, Telephone 301–443–1190. (This is not a toll-free number.)

Corrections

In the **Federal Register** of June 19, 2012, in FR DOC 2012–14891, on page 36550, in the third column, under the heading ''Dates: Key Dates:'' ''Application Deadline Date: July 16, 2012.'' should read ''July 20, 2012.'' On page 36552, in the first column, under the heading ''Proof of Non-Profit Status''; ''A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline date of July 16, 2012.'' should read ''A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline date of July 20, 2012.'' On page 36553, in the first column, under the heading ''3. Submission Dates and Times'' ''Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on July 16, 2012'' should read ''Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on July 20, 2012.'' On page 36553, in the second column, under the heading ''Proof of Non-Profit Status:'' ''Due Date July 16, 2012'' should read ''Due Date July 20, 2012.'' On page 36553, in the third column, under the fourth bullet ''If the waiver is approved, the application should be sent directly to the DGM by the deadline date of July 16, 2012.'' should read ''If the waiver is approved, the application should be sent directly to the DGM by the deadline date of July 20, 2012.''

Dated: July 2, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–17047 Filed 7–11–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs Funding Opportunity: Title V HIV/AIDS Program

AGENCY: Indian Health Service, HHS.

ACTION: Notice: correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on June 19, 2012, concerning Announcement Type: New Limited Competition. Funding Announcement Number: HHS–2012–IHS–UIHP–0001. Catalog of Federal Domestic Assistance Number: 93.193. The document contained five incorrect dates.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Wolfe, Director, Office of Urban Health Programs, Indian Health Service, 801 Thompson Avenue, Suite 200, Reyes Building, Rockville, MD 20852, Telephone 301–443–4680. (This is not a toll-free number.)

Corrections

In the **Federal Register** of June 19, 2012, in FR DOC 2012–14887, on page 36550, in the third column, under the heading ''Dates: Key Dates:'' ''Application Deadline Date: July 16, 2012.'' should read ''July 20, 2012.'' On page 36558, in the first column, under the heading ''3. Other Requirements'' ''A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline date of July 16, 2012.'' should read ''A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline date of July 20, 2012.'' On page 36558, in the third column, under the heading ''3. Submission Dates and Times'' ''Application must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on July 16, 2012.'' should read ''Application must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on July 20, 2012.'' On page 36559, in the first column, under the heading ''Other Important Due Dates: Proof of Non-Profit Status: Due date July 16, 2012.'' should read ''July 20, 2012.'' On page 36559, in the second column, ''e. If the waiver is approved, the application should be sent directly to the DGM by the deadline date of July 16, 2012, by 5:00 p.m. EDT.'' should read ''e. If the waiver is approved, the application should be sent directly to the DGM by the deadline date of July 20, 2012, by 5:00 p.m. EDT.''

Dated: July 2, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–17046 Filed 7–11–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Effectiveness of the NIH Curriculum Supplements Programs

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Science Education, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Effectiveness of the NIH Curriculum Supplements Programs Survey. *Type of Information Collection Request:* Extension of the previously approved collection (OMB No. 0925–0551, expiration date 06/30/2012). *Need and Use of Information Collection:* The survey will attempt to assess customer demographics and their satisfaction with the NIH curriculum supplements in presenting science in a more engaging and interactive way. The supplements help K–12 educators teach science by featuring the latest NIH research and utilized research-based instructional methods. A typical supplement contains two weeks of student activities on the science behind a health topic, such as cancer, sleep or obesity. Web-based simulations, animations and experiments enhance the ''pencil and paper'' activities. In addition to developing and distributing the supplements, OSE conducts professional workshops to help teachers successfully implement these lessons with their students. Since January 2000, over 6,000 teachers have attended an OSE workshop. Assessing the effectiveness of the NIH curriculum supplements and teacher workshops is critical to determining if OSE is successfully fulfilling its mission. OSE has the database infrastructure in place to easily collect data from supplement requesters and workshop attendees. At present, we do not have clearance to contact our customers to determine how NIH resources are meeting their educational needs.

BURDEN TABLE

Type of respondent: survey title	Number of respondents	Frequency of response	Average time per response (in hours)	Hour burden per year (in hours)
Supplement requestor	17,500	1	0.17	995
Workshop Teacher: initial survey	2,000	1	0.17	117
Workshop Teacher: in-depth survey	200	1	0.5	34
Totals	19,700	n/a	n/a	1,146

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) ways to enhance the quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information, contact Lisa Strauss, Office of Science Education, National Institutes of Health, 6100 Executive Boulevard, Suite 3E01, Bethesda, MD 20892–7520, or call non-toll-free at 301–496–8547. You may also email your request to *lisa.strauss@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 3, 2012.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2012–17032 Filed 7–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 19, 2012, 10:00 a.m. to July 20, 2012, 5:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 21, 2012, 77 FR 37426.

The meeting will be held August 6, 2012 to August 7, 2012. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17007 Filed 7–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Renal Disease Ancillary Studies.

Date: July 25, 2012.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 5, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17033 Filed 7–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Learning Disabilities Innovation Hubs.

Date: July 27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David H. Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17029 Filed 7–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immune Mechanism.

Date: August 1–2, 2012.

Time: 7:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR12–017: Shared Instrumentation; PET/SPECT/CT.

Date: August 2, 2012.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Malgorzata Klosek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@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: July 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–17008 Filed 7–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3346–EM; Docket ID FEMA–2011–0001]

Ohio; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Ohio (FEMA–3346–EM), dated June 30, 2012, and related determinations.

DATES: *Effective Date:* June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Ohio resulting from severe storms beginning on June 29, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Ohio.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Ohio have been designated as adversely affected by this declared emergency:

All 88 counties in the State of Ohio for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16980 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3345–EM; Docket ID FEMA–2011–0001]

West Virginia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of West Virginia (FEMA–3345–EM), dated June 30, 2012, and related determinations.

DATES: *Effective Date:* June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of West Virginia resulting from severe storms beginning on June 29, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of West Virginia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of West Virginia have been designated as adversely affected by this declared emergency:

All 55 counties in the State of West Virginia for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16979 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4068–DR; Docket ID FEMA–2012–0002]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4068–DR), dated July 3, 2012, and related determinations.

DATES: *Effective Date:* July 3, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 3, 2012.

Clay, Franklin, Hernando, Highlands, Pinellas, and Suwannee Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16971 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4066–DR; Docket ID FEMA–2012–0002]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4066–DR), dated June 22, 2012, and related determinations.

DATES: *Effective Date:* June 22, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 22, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from a severe storm, tornado, and flooding on May 29, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Addison, Lamoille, and Orleans Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16973 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4065–DR; Docket ID FEMA–2012–0002]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire

(FEMA–4065–DR), dated June 15, 2012, and related determinations.

DATES: *Effective Date:* June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 15, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe storm and flooding during the period of May 29–31, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Cheshire County for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16969 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4064–DR; Docket ID FEMA–2012–0002]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4064–DR), dated June 14, 2012, and related determinations.

DATES: *Effective Date:* June 14, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 14, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of April 28 to May 1, 2012, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Alfalfa, Craig, Grant, Kay, and Nowata Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16977 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4067–DR; Docket ID FEMA–2011–0001]

Colorado; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Colorado

(FEMA–4067–DR), dated June 28, 2012, and related determinations.

DATES: *Effective Date:* June 28, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 28, 2012, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Colorado resulting from the High Park and Waldo Canyon Fires beginning on June 9, 2012, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Crisis Counseling and Disaster Unemployment Assistance and assistance for emergency protective measures (Category B) under the Public Assistance program in the designated areas impacted by the High Park and Waldo Canyon Fires, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael F. Byrne, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Colorado have been designated as adversely affected by this major disaster:

Crisis Counseling and Disaster Unemployment Assistance in El Paso and Larimer Counties impacted by the High Park and Waldo Canyon Fires.

El Paso and Larimer Counties impacted by the High Park and Waldo Canyon Fires for emergency protective measures (Category B), including direct federal assistance under the Public Assistance Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–16978 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Teleconference Meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet by teleconference on July 26, 2012. The meeting will be open to the public.

DATES: The meeting will take place Thursday, July 26, 2012, from 1:00 p.m. to 4:00 p.m. EST. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: Members of the public who wish to obtain the call-in number, access code and other information for the public teleconference may contact Ruth MacPhail as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business July 20, 2012, as the number of teleconference lines is limited and available on a first-come, first-served basis. For information on services for individuals with disabilities or to request special assistance, contact Ruth MacPhail as soon as possible.

Members of the public may also participate by coming to the National Emergency Training Center (NETC), Building H, Room 200, Emmitsburg, Maryland. A picture identification is needed for access. Contact Ruth MacPhail for directions.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than July 20, 2012, and must be identified by docket ID FEMA–2008–0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

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

Public comments will be requested prior to deliberation of each agenda item. Speakers will be afforded 5 minutes to make comments. Contact Ruth MacPhail to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Ruth MacPhail, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and email *ruth.macphail@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463).

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, regarding the operation of the Academy and any improvements therein that the Board deems appropriate. The Board makes interim advisories to the Administrator of FEMA, through the United States Fire Administrator, whenever there is an indicated urgency to do so in fulfilling its duties. In carrying out its responsibilities, the Board examines Academy programs to

determine whether these programs further the basic missions which are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy's facilities, and examines the funding levels for Academy programs. The Board submits an annual report through the United States Fire Administrator to the Administrator of FEMA, in writing. The report provides detailed comments and recommendations regarding the operation of the Academy.

Agenda

The Board will review and approve the minutes of the April 25 and 26, 2012, meeting. The Board will review Academy program activities including instructor led online course deliveries, current curriculum developments, anticipated FY 2012 curriculum developments, and the new Student Identification Number (SID) procedure being implemented through the NFA Admissions process.

The Board will review the progress of the Executive Fire Officer Program (EFOP) Subcommittee and new course development status. The Board will also review the status of the Fire and Emergency Services Higher Education (FESHE) Institutional Recognition and Certificate program and the progress of Training Resources and Data Exchange (TRADE)/FESHE electronic meetings. The Board will discuss deferred maintenance and capital improvements on the NETC campus, to include FY 2012 Budget Planning.

After deliberation, the Board will recommend actions to the Superintendent of the National Fire Academy and the Administrator of FEMA.

Dated: July 5, 2012.

Kirby Kiefer,

Deputy Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2012–16972 Filed 7–11–12; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5602–N–04]

Notice of Proposed Information Collection: Comment Request; Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 10, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Nacheshia Foxx, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9230, Washington, DC 20410–0500, telephone (202) 708–1274 (this is not a toll-free number) for a copy of the instructions.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary.

OMB Control Number, if applicable: 2510–0006.

Description of the need for the information and proposed use: Mortgagees of HUD-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to HUD. In connection with the assignment, legal documents (e.g., mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The instructions describe the documents to be submitted and the procedures for submission.

HUD has made the following revisions to the Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary (the ''Legal Instructions''):

Part A, item 1—removed the reference to ''the model form of assignment'' and replaced it with ''the requisite language below'' since there is not a model form of assignment.

Part B, first paragraph—revised second sentence to add ''or debentures'' to indicate that one 15-day extension of the deadline for claims is applicable for claims paid in cash or debentures.

Part B, item 1—''(insert the unpaid balance as of the date of assignment)'' has been changed to ''[insert the unpaid balance as of the date of assignment]'' as this language is instructive and should not appear within the actual endorsement on the Note. Also, ''note'' was changed to ''Note'' within the requisite language, since the references are to the promissory Note.

Part B, item 2—removed '', certified by the recording official'' as this language was redundant. Also, revised the requisite Indemnification Agreement language for consistency with the form of Indemnification Agreement in Part B, item 1, to read as follows:

> [Insert name of the mortgagee] agrees to indemnify and hold harmless the Secretary of Housing and Urban Development and his/her successors and assigns against any loss, costs, or charges whatsoever, including attorney's fees, which may be sustained by the Secretary as a result of the failure of the mortgagee to furnish an original copy of [insert description of document].''

Part B, item 4—removed '', if recorded'' at the end of the first sentence, as this language was redundant.

Part B, item 5—revised the first sentence to read as follows, for clarity: ''The original security agreement/chattel mortgage, or a certified copy. All certifications must be made by the recording official.'' Also revised the second sentence to remove the sample Indemnification Agreement provision and cross-reference instead to Part B, item 2.

Part B, item 7—revised the first sentence to read as follows, for clarity: ''Original interim assignments of the

[Security Agreement][Chattel Mortgage], or certified copies. All certifications must be made by the recording official.'' Also, in the next sentence, changed ''are unrecorded'' to ''were not recorded'', and referred to the form of Indemnification Agreement in Part B, item 2.

Part B, item 8—changed references to the ''Uniform Commercial Code'' to ''UCC'' since the term was defined in Part A, item 2. Also changed ''ATIMA'' to ''as their interests may appear'' for clarity. Under ''Lapsed UCC filings'', removed ''as applicable'' at the end of the first paragraph. Under ''UCC filing was never filed'', the following sentence was added at the end of the first paragraph: ''The mortgagee must also submit an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:''.

Part B, item 8—under ''Lapsed UCC filings * * *'' and ''UCC filing was never filed''—revised the paragraphs regarding Indemnification Agreements to include the requisite language, so that the Legal Instructions would be formatted like Part B, items 1 and 2.

Part B, item 9—changed ''the Departmental regulations'' to ''HUD regulations'' for clarity.

Part B, item 10 has been revised to indicate that the evidence of property insurance is acceptable if accompanied by an affidavit from the mortgagee that the hazard insurance policy is in full force and effect as of the date of assignment to the Secretary, since mortgagees are no longer able to obtain an ACORD that does not state it is for informational purposes only and does not confer rights upon the holder of the policy. Requisite language for the mortgagee's affidavit has been added.

Part B, item 12—''project loan'' was changed to ''Note'' for accuracy, since the endorsement is on the Note.

Part B, item 13 has been added to require submission of additional documents for loans insured under Section 232 of the National Housing Act and processed under LEAN, including, but not limited to, an assignment of the Master Lease and all corollary Subordination and Non-Disturbance Agreements, the Deposit Account Control Agreement and any Notice of Exclusive Control that has been delivered to the Bank (as defined in the Deposit Account Control Agreement), and the Intercreditor Agreement and all riders thereto.

Part B, former items 13, 14 and 15 have been re-numbered to items 14, 15, and 16, respectively.

Part B, re-numbered item 15 has been revised in the first full paragraph after the Note, to indicate that if title insurance issues cannot be resolved within the deadline ''(including extensions)'', interest will be curtailed ''or the mortgage may be reassigned to the mortgagee, thereby requiring the mortgagee to reimburse the Secretary the amounts paid plus interest.''

Part B, re-numbered item 16 has been revised to change ''HUD'' to ''the Secretary'' for consistency.

Part B, final Note at end, has been revised to add that HUD reserves the right ''in its sole discretion'' to refuse to accept an Indemnification Agreement.

The revised Legal Instructions, which reflects new language added in bold, and language removed in strikeout is attached as Appendix A.

Agency form numbers, if applicable: N/A.

Members of affected public: Mortgagees when applying for insurance benefits from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Burden hours	Frequency of response	Total burden hours
359	26	1	9,334

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 9, 2012.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2012–17018 Filed 7–11–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2012–N162; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before August 13, 2012. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by August 13, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your

comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Los Angeles Zoo and Botanical Gardens, Los Angeles, CA; PRT–76851A

The applicant requests a permit to re-import a male and a female mountain tapir (*Tapirus pinchaque*), which were captive bred at the applicant's facility, Mountain View Conservation and Breeding Center, Langley, BC, Canada, for the purpose of enhancement of the survival of the species.

Applicant: NOAA/National Marine Fisheries Service, Miami, FL; PRT–045532

The applicant requests reissuance of their permit to import and/or introduce from the sea biological samples collected from on the high seas and the land, from wild animals opportunistically salvaged and incidentally captured, and captive-held animals of Kemp's ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretmochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), and olive ridley sea turtle (*Lepidochelys olivacea*) for the purpose of scientific research. This notification covers activities conducted by the applicant over a 5-year period.

Applicant: Sacramento Zoo, Sacramento, CA; PRT–76156A

The applicant requests a permit to import one male captive-born snow leopard (*Uncia uncia*) from Zoo De Granby, Quebec, Canada, for the purpose of enhancement of the species through captive breeding and conservation education.

Applicant: Denver Zoological Foundation, Denver, CO; PRT–69465A

The applicant requests a permit to import two male Asian elephants (*Elephas maximus*) born in captivity from Emmen Zoo, Emmen, Netherlands, for the purpose of enhancement of the survival of the species through captive breeding and conservation education.

Applicant: Denver Zoological Foundation, Denver, CO; PRT–69463A

The applicant request a permit to import one male Asian elephant (*Elephas maximus*) born in captivity from Dublin Zoo, Dublin, Ireland, for the purpose of enhancement of the survival of the species through captive breeding and conservation education.

Applicant: Marvin Turner, Henderson, TX; PRT–71824A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and barasingha (*Rucervus duvaucelii*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Marvin Turner, Henderson, TX; PRT–71826A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and barasingha (*Rucervus duvaucelii*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Safari West, Santa Rosa, CA; PRT–755365

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Cervidae
Equidae

Species:
Lemur catta (ring-tailed lemur)
Varecia variegata (black and white ruffed lemur)
Acinonyx jubatus (cheetah).

Applicant: Lykes Bros. Inc., Alpine, TX; PRT–78004A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lykes Bros. Inc., Alpine, TX; PRT–78003A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gary Benmark, Joelton, TN; PRT–77994A

Applicant: Coleman Floyd, Midland, TX; PRT–77911A

Applicant: Charles Nace, Sylmar, CA; PRT–78569A

Applicant: Glenn Herman, Castle Rock, CO; PRT–59368A

Applicant: Kevin Perry, Peyton, CO; PRT–78581A

B. Endangered Marine Mammals and Marine Mammals

Applicant: Terrie M. Williams, University of California, Santa Cruz, CA; PRT–045447

The applicant requests an amendment for the permit to take southern sea otters (*Enhydra lutris nereis*) to conduct Evans blue dye technique as part of the scientific research on the physiology of and metabolic demands on southern sea otters related to energetics, diving, and thermoregulation. This notification covers activities to be conducted by the applicant over the remainder of the 5-year permit.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–17004 Filed 7–11–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes approval by the Department of an extension to the Class III Gaming Compact between the State of California and the Federated Indians of Graton Rancheria.

DATES: *Effective Date:* July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240; telephone: (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compact for the purpose of engaging in Class III gaming activities on Indian lands. The Compact between the State of California and the Federated Indians of Graton Rancheria allows for one gaming facility and authorizes up to 3,000 gaming devices, any banking or percentage card games, and any devices or games authorized under State law to the State lottery. The Compact, also, authorizes limited annual payments to the State for Statewide exclusivity. Finally, the term of the compact is until December 31, 2033. This Compact is considered to have been approved but only to the extent that the Compact is consistent with the provisions of IGRA.

Dated: July 6, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–17042 Filed 7–9–12; 4:15 pm]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Interior

[LLWYP06000–L12200000–FV0000]

Notice of Intent To Collect Fees and Modify Existing Fees on Public Lands in Natrona County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), the Bureau of Land Management's (BLM) Casper Field Office is proposing to establish fees for use of the Trapper's Route Special Recreation Management Area (SRMA) and intends to modify the existing fee structure for the Muddy Mountain Environmental Education Area (EEA).

DATES: Comments on the proposed fee changes must be received or postmarked by October 10, 2012, to be assured consideration. Effective 6 months after publication of this notice, the BLM Casper Field Office will initiate fee collection at campgrounds within the Trapper's Route SRMA and change the existing fee structure within the Muddy Mountain EEA, unless the BLM publishes a **Federal Register** notice to the contrary. Comments received after the close of the comment period or comments delivered to an address other than the one listed in this notice may not be considered or included in the administrative record for the proposed fee.

ADDRESSES: The pertinent Recreation Business Management Plan is available at the BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82601, and online at: *http://www.blm.gov/wy/st/en/field_offices/Casper.html*. Comments can be mailed, hand-delivered, or faxed to the BLM, Attn: Outdoor Recreation Planner, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82601; fax: 307–261–7587. You may also email your comment to *Casper_WYMail@blm.gov* with ''Recreation Fee Collection'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Eve Bennett, Outdoor Recreation Planner, at the above address, or by calling 307–261–7600. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

The BLM welcomes public comments on this Notice, and on the new and modified fees. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

You may mail or hand-deliver comments as indicated in the **ADDRESSES** and **DATES** sections, above. The BLM will not necessarily consider or include in the administrative record comments received after the close of the comment period (see **DATES**) unless they are postmarked or electronically dated before the deadline, or comments

delivered to an address other than one of those listed above (See **ADDRESSES**).

Discussion of Fees

The Federal Lands Recreation Enhancement Act (REA), 16 U.S.C. 6801–6814, authorizes the Secretary of the Interior to establish, modify, charge, and collect recreation fees at specified categories of Federal recreation lands and waters. The REA also contains specific provisions addressing public involvement when establishing recreation fees. The authority of the Secretary to carry out these provisions expires 10 years after December 8, 2004. 16 U.S.C. 6809.

The public-involvement provisions of the REA include a requirement that Recreation Resource Advisory Committees or councils be given opportunities to make recommendations regarding the establishment of recreation fees. In Wyoming, a Recreation Action Team serves this advisory function.

In accordance with BLM policy, the Casper Field Office has prepared a Recreation Business Management Plan that explains the fee collection process associated with Trapper's Route SRMA, Muddy Mountain EEA, and special recreation permits. The business plan also outlines how the fees will be used.

The BLM has notified and involved the public at each stage of the planning process. The BLM held a public meeting on July 30, 2009, in conjunction with the National Historic Trails Interpretive Center's presentation of its business plan. The BLM also presented its plan to the Wyoming Recreation Action Team on February 23, 2010.

Each campground that will be subject to the fees announced in this Notice qualifies as a site where visitors can be charged an ''expanded amenity recreation fee'' in accordance with REA criteria at 43 U.S.C. 6802(g)(2). The Muddy Mountain EEA is a popular recreation area for both day-use and overnight visits. The EEA is located approximately 20 miles south of Casper and has two existing campgrounds. The proposed changes to the existing fee structure include eliminating the day-use fee and increasing the fees for overnight stays and extra vehicles. Camping fees will be increased from $5 to $7 for each overnight stay, and the fee for extra vehicles will be increased from $2 to $3.

The Trapper's Route SRMA is located along the North Platte River between Casper and Alcova, Wyoming, beginning approximately 40 miles southwest of Casper, Wyoming, immediately downstream from Grey Reef Dam. The SRMA spans 41 miles and encompasses more than 3,000 acres of BLM-administered public lands. In 2007, the Casper Field Office completed a recreation area management plan (RAMP) for the SRMA in order to address the negative environmental impacts caused by substantial increases in visitor use on public lands along the North Platte River. Additional infrastructure and reclamation projects have been designed to mitigate these impacts and to sustain the high quality values. New fees for use of the SRMA will be used to supplement the appropriated annual maintenance budget and diversify funding for wildlife habitat and improvement projects. Upon the completion of the recreation improvement projects, there will be eight developed sites comprised of four day-use areas and four overnight campgrounds. The BLM has not charged fees at any developed sites in the SRMA in the past. The expanded amenity fees being established for Trapper's Route SRMA include a $10 fee for overnight camping and $5 fee for each additional vehicle. A day-use fee will not be charged.

Fee amounts will be posted on-site and at the Casper Field Office, where copies of the business plan will also be available. Information concerning the proposed new fees will be available on the BLM Web site, through press releases to local media, and through word of mouth by BLM employees and local users. These efforts will continue following publication of this notice.

The existing fee structure was analyzed in Environmental Assessment WY 062–EA–99–114 (EA) for the Muddy Mountain EEA. In 2007, the BLM prepared an EA (WY 060–02–16) for the Trapper's Route SRMA, which included development of recreational infrastructure and proposed to enact a fee program for the area.

Authority: Notice of establishment of the fee area is provided pursuant to 16 U.S.C. 6803(b).

Buddy W. Green,

Acting State Director.

[FR Doc. 2012–17005 Filed 7–11–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000-L13110000-EJ0000-LXSI016K0000]

Call for Nominations for the Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Nominations are being solicited for seven positions on the Pinedale Anticline Working Group (PAWG).

DATES: Complete nominations must be received no later than August 13, 2012.

ADDRESSES: Mail or deliver nominations to Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941, or email to *ssgregory@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941; 307–315–0612, *ssgregory@blm.gov.*

SUPPLEMENTARY INFORMATION: The PAWG was established by the Environmental Impact Statement Record of Decision (ROD) for the Pinedale Anticline Project Area (PAPA) on July 27, 2000, and carried forward with the release of the ROD for the PAPA Supplemental Environmental Impact Statement on September 12, 2008. The Secretary of the Interior renewed the PAWG charter on August 3, 2010.

The PAWG is a Federal Advisory Committee Act group which develops recommendations and provides advice to the Bureau of Land Management (BLM) on mitigation, monitoring and adaptive management in the PAPA.

PAWG duties and responsibilities are as follows:

1. Develop recommendations for the BLM regarding matters relating to monitoring and mitigation of oil and gas development as described in the PAPA ROD. At the direction of the Designated Federal Officer, the PAWG may review and analyze information, recommend issues for evaluation and provide advice on the issues presented.

2. Review the implementation of construction and rehabilitation operations through an annual field inspection to provide advice to ensure that the mitigation measures are reasonable and effective.

3. Advise the BLM on working with stakeholders to develop or enhance resource management programs and objectives.

4. Make recommendations on future PAWG resource management priorities.

Nominations are being solicited for persons representing any of the following categories:

1. Federal grazing permit or lease holders within the area for which the PAWG is organized and interests associated with grazing;

2. Interests associated with transportation or rights-of-way;
3. Land owners adjacent to the area for which the PAWG is organized and interests associated with land ownership;
4. Nationally or regionally recognized environmental organizations;
5. Dispersed recreation interests (i.e. hunter, angler, outdoor recreation, off-highway vehicle users, or commercial recreation activities);
6. Those holding State, county, or local elected office;
7. Those employed by a State agency responsible for the management of natural resources, land or water;
8. Those employed as academicians by a natural resource management or natural sciences organization (i.e., museum, university); or
9. Those employed by the local government.

Nomination packages should contain the following information:
1. Name of Resource Advisory Council to be considered for;
2. Specific area of interest nominee seeks to represent;
3. Full name of nominee;
4. Business address;
5. Home address;
6. Mailing address;
7. Business phone;
8. Home phone;
9. Email address;
10. Occupation/title;
11. Education;
12. Work history;
13. Career/education/experience highlights;
14. Experience or knowledge of the Council's geographic area of jurisdiction;
15. Experience working with disparate groups to achieve collaborative solutions;
16. Any BLM permits, leases or licenses held by nominee;
17. Whether or not nominee is a registered lobbyist;
18. Original signature and date;
19. Two letters of reference from interests or organizations to be represented; and
20. A current resume.

A group nominating more than one person should indicate a preferred order of appointment.

Members are expected to attend all scheduled PAWG meetings. Members are appointed for 2-year terms and may be reappointed to additional terms at the discretion of the Secretary of the Interior.

Additional information about the PAWG, its membership and activities, and the nomination process can be found at: *http://www.blm.gov/wy/st/en/field_offices/pinedale/pawg.html.*

Note: The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Authority: 43 CFR 1784.6–1(c); 43 CFR 1784.4–1.

Donald A. Simpson,

State Director.

[FR Doc. 2012–17006 Filed 7–11–12; 8:45 am]

BILLING CODE 4310–22–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.074% (.00074) for tier 2 for calendar year 2012. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a Tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2012 shall be one-half of the annual fee rate, which is 0.037% (.00037).

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission.

The final rate being adopted today is effective for calendar year 2012. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by December 31, 2012.

Dated: July 6, 2012.

Tracie Stevens,

Chairwoman.

Dated: July 6, 2012.

Steffani A. Cochran,

Vice-Chairwoman.

Dated: July 6, 2012.

Daniel Little,

Associate Commissioner.

[FR Doc. 2012–16956 Filed 7–11–12; 8:45 am]

BILLING CODE 7565–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–055]

Notice of Intent to Co-Exclusive License.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Co-Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a co-exclusive license in the United States to practice the invention described and claimed in MFS–31303–1 Generalized Fluid Systems Simulation Program (GFSSP) Version 2.01, U.S. Patent No. 6,748,349 and MFS–32125–1 Method and Apparatus For Predicting Unsteady Pressure And Flow Rate Distribution In A Fluid Network Version 4, U.S. Patent No. 7,542,885, to MODE Technology Group, having its principal place of business in Denver, CO. The fields of use shall mean commercial off-the-shelf software products targeted to end users. The patent rights in these inventions as applicable have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive [or partially exclusive if applicable] license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, Telephone: (256) 544–0013; Facsimile: (256) 544–0258.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy A. Nabors, Technology Transfer Office/ZP30, Marshall Space Flight Center, Huntsville, AL 35812, Telephone: (256) 544–5226; Facsimile: (256) 544–0258. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–17016 Filed 7–11–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–041]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive Research Only License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent Nos. 7,113,820 entitled, ''Real-Time, High Frequency QRS Electrocardiograph,'' 7,539,535 entitled, ''Real-Time, High Frequency QRS Electrocardiograph with Reduced Amplitude Zone Detection,'' and 7,386,340 entitled, ''System for Diagnosis and Monitoring of Coronary Artery Disease, Acute Coronary Artery Syndromes, Cardiomyopathy and Other Cardiac Conditions,'' to Medcare Holdings, LTD, having its principal place of business at P.O. Box 3483, Road Town, Tortola, British Virgin Islands. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AL, Houston, TX 77058; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ted Ro, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AL, Houston, TX 77058; Phone (281) 244–7148; Fax (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–17017 Filed 7–11–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–057]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station (ISS) Advisory Committee. The purpose of the meeting is to assess NASA and Roscosmos continuing plans to support a six-person crew aboard the International Space Station, including transportation, and crew rotation; and, to assess the possibilities for using the ISS for future space exploration.

DATES: August 28, 2012, 1–2 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Glennan Conference Room, 1Q39, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of International and Interagency Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. This meeting will be open to the public up to the seating capacity of the room. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than ten working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee, and an electronically scanned or faxed copy of their passport and visa. Send identifying information to Dr. Miller via email at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527 or fax (202) 358–3030. To expedite admittance, attendees with U.S. citizenship or a green card may provide their full name, company affiliation (if applicable), and citizenship three working days in advance by contacting Dr. Miller via email at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–17037 Filed 7–11–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

AGENCY: Information Security Oversight Office, National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the committee meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee. To discuss the matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities.

DATES: The meeting will be held on July 25, 2012, 10:00 a.m. to 12:00 noon.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Jefferson Room, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, on (202) 357–5398, or at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, July 20, 2012. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: July 10, 2012.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2012–17124 Filed 7–11–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Thursday, July 26, 11 a.m.–5 p.m., ET; and on Friday, July 27, 2012, 9 a.m.–12 p.m., ET.

PLACE: The meeting will occur at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC. Interested parties may join the meeting in person or may join by phone in a listening-only capacity (with the exception of the public comment period) using the following call-in number: 1–800–239–9838; passcode 1412617. If asked, the conference call leader's name is Aaron Bishop.

MATTERS TO BE CONSIDERED: The full agenda for this quarterly meeting will be posted to NCD's Web site. Highlights from the agenda include the following topics at the following times:

July 26, 2012

11:30 a.m.—Update from Andrew Imparato, Senior Counsel and Disability Policy Director for Senator Tom Harkin, on the Senator's Disability Employment Initiative;

12:15 p.m.—Presentation by NCD's ad hoc committee on subminimum wage, followed by discussion and vote;

4:30 p.m.—Public Comment

July 27, 2012

9 a.m.—Individuals with Disabilities Education Act presentation

11 a.m.—Public Comment

PUBLIC COMMENT: There will be two public comment periods—one on July 26, 2012, from 4:30–5 p.m., ET; and one on July 27, 2012, from 11–11:30 a.m., ET. While NCD will receive comments on any topic during these periods, NCD is particularly interested in hearing from the community regarding topics it believes should be included in its 2013 statutorily mandated Progress Report to the President and Congress. Any individuals interested in providing public comment may do so in-person or by phone and will be asked to provide their names and their organizational affiliations, if applicable, and to limit their comments to three minutes. Individuals may also provide public comment in writing to Lawrence Carter-Long, Public Affairs Specialist, at *lcarterlong@ncd.gov,* using the subject line of ''Public Comment.''

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: Those who plan to attend and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: July 10, 2012.

Joan Durocher,

General Counsel & Director of Policy.

[FR Doc. 2012–17119 Filed 7–10–12; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: July 17, 2012, from 8:15 a.m. to 4:00 p.m., and July 18, 2012 from 8:00 a.m. to 12:00 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

WEBCAST INFORMATION: The public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/120717/* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

STATUS: Portions open; portions closed.

Open Sessions

July 17, 2012

8:15–8:20 a.m. (Chairman's introduction)
8:20–8:30 a.m. (SCF)
8:30–11:00 a.m. (previously noticed continuation of CPP meeting)
11:00–11:45 a.m. (A&O)

1:30–4:00 p.m. (SEI)

July 18, 2012

8:00–8:30 a.m. (CSB)
11:00 a.m.–12:00 p.m. (Board)

Closed Sessions

July 18, 2012

8:30–9:00 a.m. (CSB)
9:00–9:30 a.m. (Board, executive closed)
9:30–10:00 a.m. (Board)

Matters To Be Discussed

Tuesday July 17, 2012

CSB Subcommittee on Facilities (SCF)

Open Session: 8:20–8:30 a.m.

- Chairman's Remarks
- Approval of minutes from the May 2012 meeting
- Approval of the 2012 annual Portfolio Review
- Chairman's Closing Remarks

Committee on Audit and Oversight (A&O)

Open Session: 11:00–11:45 a.m.

- Approval of Minutes of the May 2012 Open and Closed Sessions
- Committee Chairman's Opening Remarks
- Inspector General's Update
- Chief Financial Officer's Update
- Committee Chairman's Closing Remarks

Committee on Science & Engineering Indicators (SEI)

Open Session: 1:30–4:00 p.m.

- Chairman's Remarks
- Approval of May board meeting minutes
- Director's Award for Collaborative Integration
- Review of Second Companion to *Science and Engineering Indicators 2012* and Discussion of Release Plans
- Overview of the Process for Producing *Science and Engineering Indicators 2014* and Key Board Dates and Activities
- Introduction of Chapter Authors and Discussion of *Science and Engineering Indicators 2014* Narrative Chapter Outlines
- Update on Release of the first Companion to *Science and Engineering Indicators 2012*
- Chairman's Summary

Wednesday, July 18, 2012

Committee on Strategy and Budget (CSB)

Open Session: 8:00–8:30 a.m.

- Chairman's Remarks
- Approval of May Meeting Minutes
- NSF FY 2013 Budget Update
- Report from Subcommittee on Facilities
- Other Committee Business

Committee on Strategy and Budget (CSB)

Closed Session: 8:30–9:00 a.m.

- NSF FY 2014 Budget Development

Plenary Board Meeting

Executive Closed Session: 9:00–9:30 a.m.

- Approval of Executive Closed Session Minutes, May 2012
- Discussion of Board Member Proposals
- Update on Antarctic Infrastructure Planning

Plenary Board Meeting

Closed Session: 9:30–10:00 a.m.

- Approval of Closed Session Minutes, May 2012
- Awards and Agreements (Resolutions), from CPP
- Closed Committee Reports

Plenary Open

Open Session: 11:00 a.m.–12:00 p.m.

- Approval of Open Session Minutes, May 2012
- Chairman's Report
- Director's Report
- Open Committee Reports

Meeting Adjourns: 12:00 p.m.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–17148 Filed 7–10–12; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings of the Committee on Programs and Plans (CPP) for the transaction of National Science Board business and other matters specified, as follows:

AGENCY: National Science Board.

DATES: *Date and Time:* Monday, July 16, 2012, from 3:00–5:45 p.m., and Tuesday, July 17, 2012, from 8:30–11:00 a.m.

Place: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

Updates: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

Agency Contact: Jacqueline Meszaros, *jmeszasa@nsf.gov,* (703) 292–7000.

Public Affairs Contact: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

Status: Portions open; portion closed.

Open Sessions

July 16, 2012

3:00–3:15 p.m.

July 17, 2012

8:30–11:00 a.m.

Closed Session

July 16, 2012

3:15–5:45 p.m.

MATTERS TO BE DISCUSSED:

July 16, 2012

Committee on Programs and Plans (CPP)

Open Session: 3:00–3:15 p.m.

- Information Item: Astronomical Science Portfolio Review

Closed Session: 3:15–5:45 p.m.

- Approval of minutes from the closed portion of the May 2012 meeting
- Committee Chairman's Remarks
- NSB Action Item: Proposal for a Future MREFC Project
- NSB Action Item: Integrated Ocean Discovery Program (IODP)
- NSB Action Item: National High Magnetic Field Laboratory (NHMFL)

July 17, 2012

Committee on Programs and Plans (CPP)

Open Session: 8:30–11:00 a.m.

- Approval of minutes from the open portion of the May 2012 meeting
- Committee Chairman's Remarks—Opening remarks; CY 2012 Update on Schedule of Action and Information Items for NSB Review; Plan for Support of Earthquake Engineering Research Infrastructure (NEES) Beyond 2014

- Director's Remarks
- NSB Discussion Item: Status of Implementation of Board Policy on Recompetition
- NSB Information Item: iPlant Update
- NSB Information Item: National Ecological Observatory Network (NEON)
- NSB Information Item: Renewal Award to University of Illinois for Blue Waters M&O
- CPP Program Portfolio Planning—Follow-up from Cognitive Neuroscience Program Portfolio, May CPP; Space Weather; Next Steps and Schedule for Future Program Portfolio Discussions

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2012–17122 Filed 7–10–12; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0073]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 13, 2012 (77 FR 22360).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Generic Customer Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey under Generic Clearance.

3. *Current OMB approval number:* 3150–0197.

4. *The form number if applicable:* NRC Form 671.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* NRC licensees and the public will be asked to report voluntarily.

7. *An estimate of the number of annual responses:* 3,988.

8. *The estimated number of annual respondents:* 3,884.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,614 hours.

10. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine how the Commission can improve its services and products to better meet their needs. In addition, focus groups will be conducted to discuss questions concerning those services and products. Results from the surveys will provide insight into how NRC can make its services and products cost effective, efficient and responsive to customer needs. Each survey will be submitted to OMB for its review.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 13, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad S. Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0197), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at: 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 5th day of July, 2012.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–17009 Filed 7–11–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0167]

Guidelines for Preparing and Reviewing Licensing Applications for Instrumentation and Control Upgrades for Non-Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is requesting public comment on Chapter 7, Section 7.3, Reactor Control System, augmenting NUREG–1537, Part 1, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Format and Content,'' for instrumentation and control (I&C) upgrades and NUREG–1537, Part 2, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Standard Review Plan and Acceptance Criteria,'' for instrumentation and control (I&C) upgrades. This draft section of NUREG–1537 provides revised guidance for preparing and reviewing applications to amend a facility operating license for I&C upgrades.

DATES: Comments may be submitted by August 13, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0167. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0167. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments,

see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Duane A. Hardesty, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission Washington, DC 20005–0001; telephone: 301–415–3724; email: *duane.hardesty@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0167 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0167.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG is located in ADAMS as follows: Part 1, Chapter 7.3 (ADAMS Accession No. ML12169A004, Part 2, Chapter 7.3 (ADAMS Accession No. ML12169A005, and Part 1 & 2 side-by-side, Chapter 7.3 (ADAMS Accession No. ML12169A006).

• *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–2012–0167 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

The NRC is issuing this notice to solicit public comment on Chapter 7, Section 7.3, Reactor Control System, augmenting NUREG–1537, Part 1, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Format and Content,'' for I&C upgrades and NUREG–1537, Part 2, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Standard Review Plan and Acceptance Criteria,'' for I&C upgrades. After the NRC staff considers public comments, it will make a determination regarding issuance of the final NUREG.

Dated at Rockville, Maryland, this 22nd day of June 2012.

For the Nuclear Regulatory Commission.

Jessie F. Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17011 Filed 7–11–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement 77 FR 40392, July 9, 2012

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, July 10, 2012 at 10:00 a.m.

CHANGE IN THE MEETING: Date Change.

The Closed Meeting scheduled for Tuesday, July 10, 2012 at 10:00 a.m., has been changed to Friday, July 13, 2012 at 3:00 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 10, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–17126 Filed 7–10–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67362; File No. SR–CME–2012–27]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Rules Relating to Interest Rate Swaps Clearing

July 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2012, the Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II, below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend certain rules relating to its interest rate swap (''IRS'') cleared only offering. The proposed changes make certain clarifying amendments and corrections to Chapter 8G of the CME Rulebook. The text of the proposed rule changes is available on the CME's Web site at *http://www.cmegroup.com*, at the principal office of CME, 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, CME included statements concerning the purpose and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements and comments may be examined at the places specified in Item III below. CME has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to make certain clarifying rule amendments related to its IRS offering. The first proposed change would correct an inadvertent omission in Rule 8G07 resulting from a previous filing. The new language makes clear that the methodology for allocating the IRS Guaranty Fund [3] among IRS Clearing Members [4] is based on the 30-day trailing average of an IRS Clearing Member's potential residual loss (''PRL'').

The second proposed change makes corrections to CME Rule 8G26, which currently refers to an IRS Advisory Committee that has never been formed. The IRS Advisory Committee referenced in Rule 8G26 has been superseded by other CME IRS working groups.

CME also notes that it is making certain updates to its Manual of Operations for IRS in connection with these proposed changes. These changes can be summarized as follows:

- Eligible maturity dates for IRS denominated in Canadian Dollars, Japanese Yen, Swiss Francs and Australian Dollars are being extended to 31 years from the clearing date, primarily to accommodate forward-starting 30 year swaps;
- The earliest weekly submission time for submission of IRS is being extended from 1:15 a.m. Eastern Time Monday to 6 p.m. Eastern Time Sunday;
- The daily end-of-day report sent to IRS clearing members is being updated to include listed futures and FX pricing information and changed to align the tenors of certain curves to enhance the reporting applicable to CME's portfolio margining of futures of IRS; and
- Several sample reports, field descriptions and product tables have been removed to simplify the IRS Manual; and
- Certain typographical and grammatical corrections.

CME notes that it has also submitted the proposed rule changes that are the subject of this filing to the Commodity Futures Trading Commission (''CFTC''), in CME Submission 12–204.

CME believes the proposed rule changes are consistent with the requirements of the Act, including Section 17A,[5] and the rules and regulations thereunder, because they involve improvements to CME's IRS offering for investors that help to: (i) Promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions; (ii) assure the safeguarding of securities and funds that are in CME's custody or control; and (iii) protect investors and the public interest. CME also observes that the proposed rule changes are limited to the clearing of swaps, and thus relate solely to the CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA''), and do not significantly affect any of CME's securities clearing operations, or any related rights or obligations of CME or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule changes will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding these proposed rule changes. CME has not received any unsolicited written comments from interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2012–27 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CME–2012–27. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CME–2012–27 and should be submitted on or before August 2, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. In particular, Section 17A(b)(3)(F) [7] of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds that are in the custody or control of the clearing agency, or for which it is responsible, and protect investors and

[3] CME's Rulebook defines a ''Guaranty Fund Deposit'' as ''[t]he amount required to be deposited with the [CME] Clearing House by the clearing member as a guaranty of its obligations to the Clearing House.''

[4] CME's Rulebook defines a ''Clearing Member'' as ''[a] firm meeting the requirements of, and approved for, clearing membership at the Exchange. The term 'clearing member' as used in the Rules shall include all clearing member categories set forth in Rule 900, unless otherwise specified.''

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b).

[7] 15 U.S.C. 78q–1(b)(3)(F).

the public interest. The Commission finds that the proposed clarifications to the manner in which CME allocates guaranty fund obligations among its members are consistent with the requirements of Section 17A(b)(3)(F) of the Act because the clarifications should allow CME's Members to better monitor their financial status and risk-management procedures. This, in turn, should enhance CME's ability to safeguard the securities and funds in its custody or control, or for which it is responsible.[8]

In its filing, CME requested that the Commission approve these proposed rule changes prior to the thirtieth day after the date of publication of the notice of the filing. CME has articulated three reasons for so granting approval. First, CME notes that the products covered by this filing, and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Second, CME observes that the proposed rule changes relate solely to interest rate swap clearing, and therefore relate solely to CME's swaps clearing activities, and do not significantly relate to the CME's functions as a clearing agency for security-based swaps. Third, CME contends that not approving this request on an accelerated basis will have a significant impact on the swaps clearing business of CME as a designated clearing organization.

The Commission finds good cause for granting approval of the proposed rule changes prior to the thirtieth day after publication of the notice of filing because: (i) The proposed rule changes do not significantly affect any of CME's securities clearing operations or any related rights or obligations of CME or persons using such service; (ii) CME has indicated that not providing accelerated approval would have a significant impact on its business as a designated clearing organization; and (iii) the activity relating to CME's non-security clearing operations for which CME is seeking approval is subject to regulation by another federal regulator.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–CME–2012–27) be, and hereby is, *approved* on an accelerated basis.

[8] *See* 15 U.S.C. 78q–1. In approving these proposed rule changes, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16992 Filed 7–11–12; 8:45 am]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Results of the 2011 Annual GSP Review; Notice of Hearing and Public Comments for Country Practice Petitions Accepted as Part of the 2011 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for submissions.

SUMMARY: This notice announces the results of the 2011 Annual GSP Review with respect to: (1) Products considered for addition to the list of eligible products for GSP; (2) decisions related to competitive need limitations (CNLs), including petitions for waivers of CNLs and revocation of previous CNL waivers; (3) redesignations of products previously excluded from GSP eligibility for certain countries; and (4) petitions to modify the GSP status of certain GSP beneficiary countries because of country practices. This notice also announces the schedule for public comments and a public hearing for four country practice petitions newly accepted for review (regarding Fiji, Indonesia, Iraq, and Ukraine), the closure of the country practices review of Sri Lanka's worker rights practices, and the designation of Afghanistan as a member of the South Asian Association for Regional Cooperation (SAARC) for purposes of the GSP.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. The telephone number is (202) 395–6971; the fax number is (202) 395–9674, and the email address is *Tameka_Cooper@ustr.eop.gov.*

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The schedule for review of the country practices petitions cited above follows.

September 13, 2012: Deadline for submission of pre-hearing briefs and requests to appear at the September 27, 2012 public hearing; submissions must be received by 5:00 p.m.

September 27, 2012: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on the country practice petitions newly accepted in the 2011 Annual GSP Review, i.e., petitions concerning practices of Fiji, Indonesia, Iraq, and Ukraine, at 1724 F Street, NW., Washington, DC 20508, beginning at 9:30 a.m.

October 18, 2012: Deadline for submission of post-hearing briefs, which must be received by 5:00 p.m.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free treatment of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended.

Results of the 2011 Annual GSP Review

In the 2011 Annual Review, the TPSC reviewed: (1) A petition to add a product to the list of those eligible for duty-free treatment under GSP; (2) certain cotton products for possible designation as eligible for GSP benefits when imported from least-developed beneficiary developing countries under the GSP program; (3) nine petitions to waive CNLs for products from certain beneficiary countries; (4) revocation of CNL waivers for products from certain beneficiary countries where 2011 imports exceeded certain statutory limits; (5) products eligible for *de minimis* waivers of CNLs; (6) redesignation of products previously excluded from GSP eligibility for certain beneficiary countries; and (7) country practice petitions previously submitted as part of the 2011 Annual Review and earlier reviews.

In Presidential Proclamation 8840 of June 29, 2012 the President implemented his decisions regarding GSP product eligibility issues arising out of the 2011 Annual GSP Review, including CNL waivers, CNL revocations, and product redesignations. This notice provides further information on the results of the 2011 Annual GSP Review, including disposition of country practice petitions. These results, comprising eight lists, are available for public viewing at *http://www.regulations.gov* in docket USTR–2011–0015, under ''Supporting and Related Materials'' and at *http://www.ustr.gov/webfm_send/3487.*

Specific Results

The Administration has decided to defer a decision on final disposition of a petition to add certain plastic bags

[9] 17 CFR 200.30–3(a)(12).

(categorized under subheading 3923.21.00.30 of the Harmonized Tariff Schedule (HTS)) to the list of products eligible for duty-free treatment under GSP for all GSP beneficiary countries. See List I (Decision on Petition to Add a Product to the List of Eligible Products for GSP).

Seven cotton fiber products were added to the list of eligible products for least-developed beneficiary developing countries of GSP. See List II (Decisions on Products Considered for Addition to the List of Eligible Products for GSP for Least-Developed Beneficiary Developing Countries).

The President granted petitions for waivers of CNLs for the following products: (1) Other acyclic monoamines (HTS 2921.19.60) from the Philippines; (2) ''agarbatti'' incense sticks (HTS 3307.41.00) from India; (3) seamless rubber gloves (HTS 4015.19.10) from Thailand, and (4) certain air conditioning parts (HTS 8415.90.80) from Thailand. The disposition of all accepted petitions to grant waivers of CNLs is set out in List III (Decisions on Petitions to Grant a Waiver of the Competitive Need Limitation).

The President revoked existing CNL waivers for certain silver jewelry articles (HTS 7113.11.50) from Thailand, certain rubber radial tires (HTS 4011.20.10) from Thailand, and certain hand-hooked rugs (HTS 5703.10.20) from India, as reflected in List IV (Decisions on Competitive Need Limitation Waiver Revocations).

Articles that exceeded the CNLs in 2011 and that, effective July 1, 2012, are excluded from GSP eligibility when imported from a specific beneficiary country are described in List V (Products Newly Subject to Exclusion by Competitive Need Limitation).

The President granted *de minimis* waivers to 97 articles that exceeded the 50-percent import-share CNL but for which the aggregate value of all U.S. imports of that article was below the 2011 *de minimis* level of $20.5 million. See List VI (Decisions on Products Eligible for *De Minimis* Waivers). The articles for which *de minimis* waivers were granted will continue to be eligible for duty-free treatment under GSP when imported from the associated countries.

The President redesignated one product, kola nuts (HTS 0802.70.20) from Cote d'Ivoire, as eligible for GSP. List VII (Decisions on Products Eligible for Redesignation) provides the list of the articles and associated countries reviewed for redesignation.

Country Practice Petitions

The status of country practice petitions considered in the 2011 GSP Annual Review is described in List VIII (Petitions for Review of Country Practices). This list includes petitions accepted as part of annual reviews from previous years. USTR, drawing on the advice of the TPSC, has accepted for review three country practice petitions submitted as part of the 2011 GSP Annual Review—on Fiji regarding worker rights and on Indonesia and Ukraine regarding intellectual property rights—as well as a petition on Iraq regarding worker rights that had been submitted as part of an earlier annual review. USTR has deferred a decision on acceptance of a petition on Russia regarding expropriation.

USTR, drawing on the advice of the TPSC, has decided to close the country practice review of case 005–CP–08 regarding worker rights in Sri Lanka, in view of significant progress made by the government of Sri Lanka over the past few years in affording internationally recognized worker rights to workers in that country.

Country practice petitions accepted for review in previous years that continue to be under review include: Lebanon, Russia and Uzbekistan regarding intellectual property rights, and Bangladesh, Georgia, Niger, the Philippines, and Uzbekistan regarding worker rights.

Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a public hearing on Thursday, September 27, 2012 for the four newly accepted country practice petitions (Fiji, Indonesia, Iraq, and Ukraine) beginning at 9:30 a.m. at 1724 F Street NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be made available on *http://www.regulations.gov* within two weeks of the hearing. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' set out below, the name, address, telephone number, and email address, if available, of the witness(es) representing their organization by 5 p.m., September 13, 2012. Requests to present oral testimony must be accompanied by a written brief or summary statement, in English, and also must be received by 5 p.m., September 13, 2012. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited below and are submitted, in English, by 5 p.m., October 18, 2012. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or comments, in English, by 5 p.m., September 13, 2012, and post-hearing written briefs or comments, in English, by 5:00 p.m., October 18, 2012.

The GSP Subcommittee strongly encourages submission of all post-hearing submissions by the October 18, 2012 deadline in order to receive timely consideration in the GSP Subcommittee's review of the subject petitions. However, if there are new developments or information that parties wish to share with the GSP Subcommittee after this date, the regulations.gov docket will remain open until June 30, 2013. Comments, letters, or other submissions related to the subject petitions must be posted to the *http://www.regulations.gov* docket in order to be considered by the GSP Subcommittee.

Requirements for Submissions

All submissions in response to this notice must be submitted electronically via *http://www.regulations.gov,* using docket number USTR–2012–0012. All submissions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.* Any person or party making a submission is strongly advised to review the GSP regulations and the GSP Guidebook, available at the same link.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2012–0012 in the ''Search for'' field on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' in the ''Filter Results by'' section on the left side of the screen and click on the link entitled ''Comment Now.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that submissions be provided in an attached document. When attaching a document, type (1) the country and case number of the subject petition; and (2) ''See attached'' in the ''Type Comment'' field on the online submission form, and indicate on the attachment whether the document is, as

appropriate, ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' or a ''Post-hearing brief.'' The case number and country name can be found in the document described above as List VIII (Petitions for Review of Country Practices). Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov.* The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

A person seeking to request that information contained in a submission from that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. Any submission containing business confidential information must be accompanied by a separate, non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public versions of all documents relating to the review of the subject country practice petitions will be made available for public viewing in docket USTR–2012–0012 at *http://www.regulations.gov* upon completion of processing and within seven to ten days after the relevant deadline for submission.

Afghanistan Added to SAARC

Section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), authorizes the President to provide that all members of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, shall be treated as one country for purposes of the GSP. In Proclamation 7912 of June 29, 2005, the President determined that the members of the South Asian Association for Regional Cooperation (SAARC) should be treated as one country for the purposes of GSP, and SAARC members were added to general note 4(a) of the HTS. On December 29, 2006, in Proclamation 8098, the President, pursuant to section 507(2) of the Trade Act of 1974, announced that ''Afghanistan is designated as a member of the South Asian Association for Regional Cooperation (SAARC) for purposes of the GSP on the date that it becomes a SAARC member. The United States Trade Representative shall announce such a date in a notice published in the **Federal Register**.'' The United States Trade Representative hereby announces that as of April 3, 2007, Afghanistan became a SAARC member for the purposes of the GSP.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2012–17023 Filed 7–11–12; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver for Aeronautical Land-Use Assurance at Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent for waiver of aeronautical land-use.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the conversion of the airport property. The proposal consists of two parcels of land containing a total of approximately 120.46 acres located to the northeast and southeast of the intersection of East 36th Street North and North Mingo Road.

These parcels were originally acquired under the following grants: Airport Development Aid Program (ADAP) No. 6–40–0099–15 in 1978; Federal Aid to Airports Program (FAAP) Nos. 9–34–032–C312 in 1962 and 9–34–032–C514 in 1964; portions of these parcels were acquired with non-grant funds. The land comprising these parcels is outside the forecasted need for aviation development and, thus, is no longer needed for indirect or direct aeronautical use. In addition, these parcels have no access to the airfield. The Airport wishes to develop this land for compatible commercial, nonaeronautical use. The income from the conversion of these parcels will benefit the aviation community by reinvestment in the airport.

Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: Send comments on this document to Mr. Edward N. Agnew, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office Manager, 2601 Meacham Boulevard, Fort Worth, TX 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Hough, Deputy Airports Director, Tulsa Airport Authority, Post Office Box 581838, Tulsa, OK 74158, telephone (918) 838–5000; or Mr. Edward N. Agnew, Federal Aviation Administration, Arkansas/Oklahoma Airports Development Office Manager, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5630, FAX (817) 222–5987. Documents reflecting this FAA action may be reviewed at the above locations.

SUPPLEMENTARY INFORMATION: Following are legal description of the property located in Tulsa County, OK: A tract of land located in the southwest quarter of

the southwest quarter of Section 18, T–20–N, R–14–E, Tulsa County, State of Oklahoma, being more particularly described as follows: Commencing at the Southwest corner of Section 18 to wit, thence north along the western line of the southwest quarter 99.329 feet to a point; thence North 88 degrees 56 minutes 04 seconds East 47.76 feet to the point of beginning; thence North 00 degrees 42 minutes 03 seconds West 2,475.9 feet to a point; thence North 88 degrees 30 minutes 01 seconds East 1,244.3 feet to a point; thence South 01 degrees 49 minutes 05 seconds West 2,495.7 feet to a point; thence South 89 degrees 18 minutes 04 seconds West 1,134.49 feet back to the point of beginning; said tract containing 67.827 acres more or less.

A tract of land located in the northwest quarter of the northwest quarter of Section 19, T–20–N, R–14–E, Tulsa County, State of Oklahoma, being more particularly described as follows: Commencing at the northwest corner of Section 19 to wit, thence south along the western line of the northwest quarter 71.924 feet to a point; thence North 88 degrees 56 minutes 04 seconds East 78.15 feet to the point of beginning; thence North 88 degrees 20 minutes 01 seconds East 1,084.5 feet to a point; thence South 01 degrees 49 minutes 05 seconds West 2,211.0 feet to a point; thence South 87 degrees 33 minutes 02 seconds West 987.6 feet to a point; thence North 00 degrees 42 minutes 03 seconds West 2,220.6 feet back to the point of beginning; said tract containing 52.635 acres more or less.

Issued in Fort Worth, Texas on July 3, 2012.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 2012–16863 Filed 7–11–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 134 July 12, 2012

Part II

Commodities Futures Trading Commission

17 CFR Part 1
Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AD57

Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed interpretive guidance and policy statement.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC) is publishing for public comment this proposed interpretive guidance and policy statement regarding the cross-border application of the swaps provisions of the Commodity Exchange Act (''CEA'') that were enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Commission's regulations promulgated thereunder. Specifically, this proposed interpretive guidance and policy statement describes the following: The general manner in which the Commission will consider whether a person's swap dealing activities or swap positions may require registration as a swap dealer or major swap participant, respectively, and the application of the related requirements under the CEA to swaps involving such persons; and the application of the clearing, trade execution, and certain reporting and recordkeeping provisions under the CEA, to cross-border swaps involving one or more counterparties that are not swap dealers or major swap participants. This proposed interpretive guidance and policy statement also generally describes the policy and procedural framework under which the Commission may permit compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA.

DATES: Comments must be received on or before August 27, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD57, by any of the following methods:

- *The agency's Web site:* at *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commodity Futures Trading Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

Throughout this proposed interpretive guidance, the Commission requests comment in response to specific questions set out herein. For convenience, the Commission has numbered each of these requests for comment. The Commission asks that, in submitting responses to these requests for comment, commenters kindly identify the specific number of each request to which their comments are responsive.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposal will be retained in the public comment file and will be considered as required under the Administrative Procedure Act [2] and other applicable laws, and may be accessible under the Freedom of Information Act.[3]

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[1] 17 CFR 145.9.

[2] 5 U.S.C. 551, et seq.

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I. Background

A. The Dodd-Frank Wall Street Reform and Consumer Protection Act

In the fall of 2008 a series of large financial institution failures triggered a financial and economic crisis that threatened to freeze U.S. and global credit markets. As a result, unprecedented governmental intervention was required to ensure the stability of the U.S. financial system.[4] These failures revealed the vulnerability of the U.S. financial system and economy to wide-spread systemic risk resulting from, among other things, poor risk management practices of financial firms, the lack of supervisory oversight for certain financial institutions as a whole, and the interconnectedness of the global swap business.[5]

American International Group (''AIG'') is a prime example of how the stability of a large financial institution could be undermined by its activities abroad and how the entire U.S. financial system could be threatened as a result.[6] AIG was a regulated U.S. insurance company nearly undone by its collateral posting obligations under swaps entered into by its subsidiary, AIG Financial Products (''AIGFP''). AIGFP was headquartered in Connecticut and had major operations in London, with trades routed through Banque AIG, a French bank. AIGFP suffered enormous losses from credit default swaps that it issued on certain underlying securities, which, because AIGFP's performance on such credit default swaps had been guaranteed by its parent, caused credit agencies to downgrade the credit rating of the entire AIG corporation. The downgrade triggered collateral calls and resulted in a liquidity crisis at AIG, which ultimately necessitated over $85 billion of indirect assistance from the Federal Reserve Bank of New York to prevent AIG's default.

The Lehman Brothers Holding Inc. (''LBHI'') bankruptcy offers another stark lesson on how risks can spread quickly across the affiliated entities of a multinational financial institution, ultimately causing the collapse of the entire financial institution. LBHI was a U.S.-based multinational corporation, with various affiliates and subsidiaries operating globally, including Lehman Brothers International (Europe) (''LBIE'').

The Lehman global business and operations relied on ''highly integrated, trading and non-trading relationships across the group.'' [7] The affiliates and subsidiaries within the group provided each other with more than equity investments and capital. They provided each other with treasury functions, custodial arrangements, depository functions, trading facilitation, swaps, funding, management, information technology and other operational services. Most notably, many of LBIE's obligations under its swaps with certain counterparties were guaranteed by the ultimate holding company, LBHI. In fact, at the time of default, LBIE had an estimated 130,000 OTC derivatives trades outstanding, most of which were guaranteed by LBHI.[8]

There are other parallels. In the many events leading up to the 2008 crisis, Citigroup, like many other financial institutions, utilized numerous structured investment vehicles (''SIVs'') to shift certain activities off balance sheets and manage both capital requirements and reported accounting.[9] Citigroup stood behind these vehicles through liquidity puts, a form of a guarantee. When the SIVs' funding was exhausted, Citigroup ultimately assumed approximately $49 billion of debt directly onto its balance sheet.[10] Similarly, in 2007, Bear Stearns found itself exposed to the failings of two overseas hedge funds, Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. and Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund, Ltd.[11] The funds were incorporated in the Cayman Islands as exempted liability companies, with registered offices in the Cayman Islands. However, when the funds collapsed under the weight of their significant investments in subprime mortgages, Bear Stearns bailed out the funds.

A decade before the AIG and Lehman collapses, a hedge fund advised by Long-Term Capital Management L.P. (''LTCM'') nearly failed, leading a number of creditors to provide LTCM substantial financial assistance under the supervision of the Federal Reserve Bank of New York. LTCM was based in Greenwich, Connecticut but managed trades in Long-Term Capital Portfolio LP, a partnership registered in the Cayman Islands. This hedge fund, with approximately $4 billion in capital and a balance sheet of just over $100 billion, had a swap book in excess of $1 trillion notional. More recently, J.P. Morgan Chase & Co. (''J.P. Morgan''), the largest U.S. bank, has disclosed a multi-billion dollar trading loss stemming from its Chief Investment Office located in London.[12] The significant reported losses at J.P. Morgan are a reminder of a key lesson from the failures of AIG and Lehman: A regulatory gap or lapse within any part of a financial institution can lead to the failure of the entire institution.

As these examples illustrate, corporate structures and inter-affiliate obligations may cause the activity, regardless of where that activity takes place, to have a direct and significant connection with activities in, or effect

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[4] On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, which was principally designed to allow the U.S. Treasury and other government agencies to take action to restore liquidity and stability to the U.S. financial system (*e.g.,* the Troubled Asset Relief Program—also known as TARP—under which the U.S. Treasury was authorized to purchase up to $700 billion of troubled assets that weighed down the balance sheets of U.S. financial institutions). *See* Public Law 110–343, 122 Stat. 3765 (2008).

[5] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at xxvii, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[6] *See, e.g.,* Gretchen Morgenson, ''Behind Insurer's Crisis, Blind Eye to a Web of Risk,'' N.Y. Times, Sept. 27, 2008. Corrected version published Sept. 30, 2008, available at *http://www.nytimes.com/2008/09/28/business/28melt.html?pagewanted=all.*

[7] ''The global nature of the Lehman business with highly integrated, trading and non-trading relationships across the group led to a complex series of inter-company positions being outstanding at the date of Administration. There are over 300 debtor and creditor balances between LBIE and its affiliates representing $10.5B of receivables and $11.0B of payables as at September 15 2008.'' *See* Lehman Brothers International (Europe) in Administration, Joint Administrators' Progress Report for the Period 15 September 2008 to 14 March 2009, available at: *http://www.pwc.co.uk/assets/pdf/Ibie-progress-report-14049.pdf.*

[8] *Id.*

[9] *See, e.g.,* Andrew Bary, ''Of Citi and SIVs: Can Banks Plug the Leak?,'' Barron's, Oct. 22, 2007, available at *http://online.barrons.com/article/SB119284238641065650.html.*

[10] *See, e.g.,* Financial Times, Citi launches $49bn SIV rescue (Dec. 14, 2007), available at *http://www.ft.com/intl/cms/s/0/6626b45e-a9dd-11dc-aa8b-0000779fd2ac.html#axzz1yMOOB81b MarketWatch.* Citigroup says it will absorb SIV assets (Dec. 14, 2007), available at *http://articles.marketwatch.com/2007-12-14/news/30679845_1_sivs-citigroup-ceo-vikram-pandit.*

[11] *See* In Re: Bear Sterns High-Grade Structured Credit Strategies Master Funds, LTC, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), available at *http://www.nysb.uscourts.gov/opinions/brl/158971_25_opinion.pdf.*

[12] *See* ''Lehman Brothers International (Europe) in Administration, Joint Administrators' Progress Report for the Period 15 September 2008 to 14 March 2009,'' available at: *http://www.pwc.co.uk/assets/pdf/Ibie-progress-report-14049.pdf.*

on, commerce in the U.S. In many of the largest financial institutions, the overall business operates as a tightly integrated network of business lines and services conducted through various branches or affiliated legal entities which are under the unified management of the parent entity.[13] These large financial institutions effectively operate their businesses as a single business, by virtue of the relationship with the parent company and to each other, with the constituent parts inextricably linked to each other. The interconnected nature of the relationships among the affiliated entities within a corporate group means that a risk in any part of this group, whether in the United States or abroad, can quickly spread throughout the organization and jeopardize the financial integrity of the entire group.

Congress sought to address the deficiencies in the regulatory system that contributed to the financial crisis through the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), which was signed by President Obama on July 21, 2010.[14] Title VII of the Dodd-Frank Act amended the CEA [15] to overhaul the structure and oversight of the over-the-counter derivatives market that previously had been subject to little or no oversight. One of the cornerstones of this legislation is the establishment of a new statutory framework for comprehensive regulation of financial institutions that participate in the swaps market as swap dealers or major swap participants (''MSPs''), which must register and are subject to greater oversight and regulation.[16] A key goal of this new framework for swap dealers and MSPs is to minimize the potential for the recurrence of the type of financial and operational stresses that contributed to the 2008 financial crisis.

Efforts to regulate the swaps market are underway not only in the United States, but also abroad in the wake of the 2008 financial crisis. In 2009, leaders of the Group of 20 (''G20'') whose membership includes the European Union (''EU''), the United States, and 18 other countries—agreed that: (i) OTC derivatives contracts should be reported to trade repositories; (ii) all standardized OTC derivatives contracts should be cleared through central counterparties and traded on exchanges or electronic trading platforms, where appropriate, by the end of 2012; and (iii) non-centrally cleared contracts should be subject to higher capital requirements. In line with the G20 commitment, much progress has been made to coordinate and harmonize international reform efforts, but the pace of reform varies among jurisdictions and disparities in regulations remain due to differences in cultures, legal and political traditions, and financial systems.[17]

B. The Scope of the Proposed Interpretative Guidance and Policy Statement

In light of the global nature of the swap market, the extent to which the Dodd-Frank Act's requirements will apply to cross-border activities is critically important. U.S. market participants regularly enter into swaps with other market participants that are domiciled outside of the U.S. or incorporated in non-U.S. jurisdictions.[18] Many U.S. and non-U.S. domiciled or incorporated financial institutions conduct their swaps business across multiple jurisdictions, with swaps that are negotiated and executed by a branch or affiliate in one jurisdiction while the actual counterparty to the swap is an entity in another jurisdiction.

The Commission received numerous comments during the Dodd-Frank Act rulemaking process from interested parties concerning the application of Title VII of the Dodd-Frank Act and the Commission's implementing regulations thereunder to the cross-border activities of non-U.S. and U.S. market participants.[19] The key issues raised by

[13] Typically, the various business lines and services—while conducted out of separate legal entities—are highly integrated and inter-dependent. Key strategic and operational decisions are centralized and informed by the firm's global, group-wide perspective. The individual legal entities affiliates and subsidiaries share common corporate support functions, such as treasury, custodial, brokerage and depository services and related infrastructures. The affiliated entities within the corporate group may also provide funding or credit support for each other and enter into trades with each other. In large part, this consolidated structure is necessary to allow the firm to address and manage customer needs, funding opportunities, capital and other regulatory requirements, financial accounting and tax planning, among other things.

[14] Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

[15] 7 U.S.C. 1, *et seq.*

[16] In this proposed interpretative guidance and policy statement, the provisions of the CEA relating to swaps that were enacted by Title VII of the Dodd-Frank Act are also referred to herein as ''the Dodd-Frank requirements.''

[17] Legislatures and regulators in a number of foreign jurisdictions are undertaking significant regulatory reforms over the swaps market and its participants. *See* CFTC and SEC, Joint Report on International Swap Regulation Required by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Jan. 31, 2012, at 23, available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/dfstudy_isr_013112.pdf.*

For example, the European Parliament adopted the substance of the European Market Infrastructure Regulation (''EMIR'') on March 29, 2012. See Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories—Outcome of the European Parliament's first reading (Brussels, 28 to 29 March 2012), available at *http://register.consilium.europa.eu/pdf/en/12/st06/st06399.en12.pdf.*

In December 2010, the European Commission released a public consultation on revising the Markets in Financial Instruments Directive (''MiFID''). *See* ''European Commission Public Consultation: Review of the Markets in Financial Instruments Directive,'' Dec. 8, 2010, available at *http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf.*

In October 2011, the European Commission released two public consultations, one to revise MiFID and the other for creating a new regulation entitled the Markets in Financial Instruments Regulation (''MiFIR''). *See* ''European Commission Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council,'' COM (2011) 656 final (Oct. 20, 2011), available at *http://ec.europa.eu/internal_market/securities/docs/isd/mifid/COM_2011_656_en.pdf;* ''European Commission Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending regulation [EMIR] on OTC derivatives, central counterparties and trade repositories,'' COM (2011) 652 final (Oct. 20, 2011), available at *http://ec.europa.eu/internal_market/securities/docs/isd/mifid/COM_2011_652_en.pdf.*

The Japanese legislature passed the Amendment to the Financial Instruments and Exchange Act (''FIEA'') in May 2010. *See* Outline of the bill for amendment of the Financial Instruments and Exchange Act, May 2010, available at *http://www.fsa.go.jp/en/refer/diet/174/01.pdf.*

[18] *See* Bank of International Settlements (BIS), Committee on the Global Financial System, No. 46, The macro financial implications of alternative configurations for access to central counterparties in OTC derivatives markets, Nov. 2011, at 1, available at *http://www.bis.org/publ/cgfs46.pdf* (''The configuration of access must take account of the globalized nature of the market, in which a significant proportion of OTC derivatives trading is undertaken across borders.'').

[19] *See, e.g.,* Institute of International Bankers (''IIB'') (Jan. 10, 2011); International Swaps and Derivatives Association (''ISDA'') (Feb. 22, 2011), Securities Industry and Financial Markets Association (''SIFMA'') (Feb. 3, 2011), Cleary Gottlieb Steen & Hamilton LLP (''Cleary'') (Sept. 20, 2011), and Barclays Bank PLC, BNP Paribas S.A., Credit Suisse AG, Deutsche Bank AG, HSBC, Nomura Securities International, Inc., Rabobank Nederland, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, The Toronto-Dominion Bank, and UBS AG (''Twelve Foreign Banks'') (Feb. 17, 2011). In total, the Commission received approximately 120 comment letters (submitted in response to various proposed rules implementing the Dodd-Frank Act) that addressed or raised issues related to cross-border swap activities. These letters, received by the Commission in response to various Commission rulemakings, may be found on the Commission's Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/index.htm.*

In addition, the Commission and the Securities and Exchange Commission (''SEC'') held a joint public roundtable on August 1, 2011 on international issues relating to the implementation of Title VII of the Dodd-Frank Act (''Roundtable''). During the Roundtable, commenters discussed the impact of the various requirements on their cross-border activities. A copy of the transcript from the Roundtable can be found on the Commission's Web site at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission21_080111-trans.pdf.*

the commenters include (i) the nature of the connections to the United States that would require a non-U.S. person to register as a swap dealer or MSP under the CEA and the Commission's regulations; [20] (ii) which Dodd-Frank Act requirements apply to the swap activities of non-U.S. persons, U.S. persons, and their branches, agencies, subsidiaries and affiliates outside of the United States; [21] and (iii) to the extent that Title VII of the Dodd-Frank requirements would apply, the circumstances under which the Commission would consider permitting a non-U.S. person to comply with the regulatory regime of its foreign jurisdiction instead of complying with the Dodd-Frank Act and the Commission's regulations promulgated thereunder.[22]

In this proposed interpretive guidance and policy statement (''proposed interpretive guidance''), the Commission addresses the key issues raised by the commenters with respect to the application of Title VII of the Dodd-Frank Act and the Commission's rules promulgated thereunder to cross-border swaps and activities. Following the background discussion in Section I, the Commission sets out its proposed interpretive guidance in the subsequent three sections. Section II sets forth the Commission's proposed interpretation of its authority to apply the Dodd-Frank Act and its regulations extraterritorially under section 2(i) of the CEA.[23] Section II also describes the general manner in which the Commission proposes to consider the following: (i) Whether a non-U.S. person's swap dealing activities are sufficient to require registration as a ''swap dealer,'' as further defined in a joint release adopted by the Commission and the SEC (collectively, the ''Commissions''); (ii) whether a non-U.S. person's swap positions are sufficient to require registration as a ''major swap participant,'' as further defined in a joint release adopted by the Commissions; and (iii) the treatment for registration purposes of foreign branches, agencies, affiliates, and subsidiaries of U.S. swap dealers and of U.S. branches of non-U.S. swap dealers.[24]

Section III sets forth the manner in which the Commission proposes to interpret section 2(i) of the CEA as it applies to the requirements under Title VII of the Dodd-Frank Act and the Commission's regulations promulgated thereunder to swaps and activities of non-U.S. swap dealers, non-U.S. MSPs and foreign branches, agencies, affiliates, and subsidiaries of U.S. swap dealers. In section III, the Commission also proposes to permit a non-U.S. swap dealer or non-U.S. MSP to comply with comparable foreign regulatory requirements in order to satisfy applicable statutory and regulatory requirements under Title VII of the Dodd-Frank Act.[25] In section IV, the Commission generally describes a process by which a non-U.S. applicant for swap dealer or MSP registration may seek the Commission's recognition of substituted compliance with a comparable foreign regulatory requirement and the general scope of Commission review in making the requisite comparability finding. Section V sets forth the manner in which the Commission proposes to interpret section 2(i) of the CEA as it applies to the clearing, trading, and certain reporting requirements under the Dodd-Frank Act with respect to swaps between counterparties that are not swap dealers or MSPs.

The Commission clarifies that this proposed interpretive guidance does not establish or modify any person's rights and obligations under the CEA or the Commission's regulations promulgated thereunder. The Commission notes that the proposed interpretive guidance does not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided herein.

II. Consideration of Whether a Non-U.S. Person Is a Swap Dealer or Major Swap Participant

A. Section 2(i) of the CEA

Section 722(d) of the Dodd-Frank Act amends section 2 of the CEA [26] to add a new paragraph (i) entitled ''Applicability,'' which consists of two subsections. Specifically, section 2(i) states that the provisions added to the CEA by Title VII of the Dodd-Frank Act shall not apply to activities outside the United States unless those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.[27]

Section 2(i) provides the Commission with express authority over activities outside the United States when such swaps and activities have a ''direct and significant'' connection with activities

[20] Commenters agreed generally that non-U.S. persons engaged in swap dealing activity directly with U.S. counterparties should be registered with the Commission as swap dealers. *See, e.g.,* Cleary (Sept. 20, 2011). On the other hand, according to commenters, swap dealing conducted outside of the U.S. between non-U.S. persons is not sufficiently connected to the U.S. to warrant swap dealer registration. *See, e.g.,* Twelve Foreign Banks (Feb. 17, 2011); SIFMA (Feb. 3, 2011). Commenters also said that a non-U.S. person that limits its U.S. swap activity to U.S. persons that are registered as swap dealers should not have to register, because regulation of the U.S. registered swap dealer is sufficient. *See* Bank of Tokyo-Mitsubishi UFJ Ltd., Mizuho Corporate Bank Ltd., Sumitomo Mitsui Banking Corporation (''Japanese Banks'') (May 5, 2011) and Twelve Foreign Banks (Feb. 17, 2011).

[21] *See, e.g.,* Cleary (Sept. 20, 2011) IIB (Jan. 10, 2011) and SIFMA (Feb. 3, 2011). Generally speaking, these commenters urged that the Commission adopt a framework that preserves the strengths of existing market practices and home country supervision, while avoiding regulatory duplication, unrealistic extraterritorial supervisory responsibilities, and fragmentation of the swap markets. *See, e.g.,* IIB (Jan. 10, 2011) and SIFMA (Feb. 3, 2011). According to these commenters, entities outside the United States should comply with rules adopted under the Dodd-Frank Act with respect to requirements applicable to specific swaps, but should be subject to home country supervision by their home country regulators with respect to requirements applicable at the entity level. On the other hand, other commenters said that a U.S. entity must not be able to conduct swap business with non-U.S. persons free from regulation under the Dodd-Frank Act by establishing a non-U.S. affiliate and conducting the swap business through the affiliate. *See* Better Markets, Inc. (Jan. 24, 2011).

[22] *See, e.g.,* Seven Foreign Banks (Jan. 11, 2011) and Hess (Jan. 24, 2011). Commenters stated that deference to comparable home country regulation accords with principles of international comity and is consistent with the approach taken by U.S. banking regulators with respect to non-U.S. banks. *See, e.g.,* FSR (Feb. 22, 2011), IIB (April 11, 2011), Cleary (Sept. 20, 2011). Numerous commenters also recommended that comparability should be determined based on whether the home country entity-level requirements are reasonably designed to achieve the same policy objectives as the corresponding requirements under the Dodd-Frank Act. *See* Cleary (Sept. 20, 2011). Commenters said that the Commission should defer to the home country, entity-level requirements only when they are comparable. Commenters also discussed Dodd-Frank Act requirements that potentially apply to all swap market participants, not just registered swap dealers and MSPs. For instance, commenters said that when a non-U.S. person executes or clears a swap on a U.S.-registered facility, the non-U.S. person should be subject to the Commission's swap position limit requirements. *See* US Banks (Feb. 22, 2011). Commenters said that clearing requirements should not apply to swaps between two non-U.S. persons, and that the regulators in various countries should work together to recognize comparably-regulated clearinghouses. *See* SIFMA (Feb. 3, 2011) and Seven Foreign Banks (Jan. 11, 2011).

[23] 7 U.S.C. 2(i).

[24] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant''; Final Rule, 77 FR 30596, May 23, 2012.

[25] This proposed interpretative release does not address the scope of the Commission's authority under CEA section 2(i) over non-swap agreements, contracts, transactions or markets within the Commission's jurisdiction or persons who participate in or operate those markets.

[26] 7 U.S.C. 2.

[27] 7 U.S.C. 2(i).

in, or effect on, commerce of the United States or when they contravene such rules as the Commission may promulgate to prevent evasion of the provisions of Title VII of the Dodd-Frank Act.[28] Section 2(i) does not, however, require the Commission to extend its reach to the outer bounds of that authorization. Rather, in exercising its authority with respect to swap activities outside the United States, the Commission will be guided by consideration of international comity principles. The subsections that follow address the general manner in which the Commission will determine the cross-border application of the CEA's swap provisions, consistent with section 2(i) of the CEA.

B. Proposed Interpretation of the Term ''U.S. Person''

For purposes of this interpretive guidance, the Commission proposes to interpret the term ''U.S. person'' by reference to the extent to which swap activities or transactions involving one or more such person have the relevant effect on U.S. commerce. For example, this interpretation would help determine whether non-U.S. persons engaging in swap dealing transactions with ''U.S. persons'' in excess of the de minimis level would be required to register and regulated as a swap dealer. In addition, for the same reasons, the term ''U.S. person'' can be helpful in determining the level of U.S. interest for purposes of analyzing and applying principles of international comity when considering the extent to which U.S. transaction-level requirements should apply to swap transactions.

Specifically, as proposed, the term ''U.S. person'' would include, but not be limited to: (i) Any natural person who is a resident of the United States; (ii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund, or any form of enterprise similar to any of the foregoing, in each case that is either (A) organized or incorporated under the laws of the United States or having its principal place of business in the United States [29] (''legal entity'') or (B) in which the direct or indirect owners thereof are responsible for the liabilities of such entity and one or more of such owners is a U.S. person; (iii) any individual account (discretionary or not) where the beneficial owner is a U.S. person; (iv) any commodity pool, pooled account, or collective investment vehicle (whether or not it is organized or incorporated in the United States) of which a majority ownership is held, directly or indirectly, by a U.S. person(s); (v) any commodity pool, pooled account, or collective investment vehicle the operator of which would be required to register as a commodity pool operator under the CEA; (vi) a pension plan for the employees, officers, or principals of a legal entity with its principal place of business inside the United States; and (vii) an estate or trust, the income of which is subject to United States income tax regardless of source.

Under this interpretation, the term ''U.S. person'' generally means that a foreign branch or agency of a U.S. person would be covered by virtue of the fact that it is a part, or an extension, of a U.S. person. By contrast, a foreign affiliate or subsidiary of a U.S. person would be considered a non-U.S. person, even where such an affiliate or subsidiary has certain or all of its swap-related obligations guaranteed by the U.S. person.

Request for Comment

Q1. Please provide specific comments regarding the Commission's proposed interpretation of the term ''U.S. person.''

Q1a. In the Commission's view, the concerns regarding risks associated with the affiliate group structure are heightened where a U.S. person guarantees (or provides similar support) to a foreign affiliate or subsidiary. In such situations, the risk of the swaps executed abroad are effectively transferred to or incurred by the U.S. person. Or stated differently, the risk of the affiliate's swap transactions have a direct and significant connection to, or effect on, the U.S. person that is the guarantor. Under these circumstances, notwithstanding that the U.S. person may be subject to a robust regulatory regime, its financial stability may be put at risk by activities outside the firm. Accordingly, the Commission is considering, and seeks comments on, whether the term ''U.S. person'' should be interpreted to include a foreign affiliate or subsidiary guaranteed by a U.S. person.

Q1b.Several commenters have suggested that the Commission adopt the definition of ''U.S. person'' in the SEC's Regulation S.[30] Should the Commission interpret the term ''U.S. person'' in a similar manner notwithstanding that Regulation S has a different focus?

Q1c. As an alternative to the proposed interpretation of the term ''U.S. person,'' should the Commission interpret the term to include a concept of control under which a non-U.S. person who is controlled by or under common control with a U.S. person would also be considered a U.S. person? If so, how should the Commission define the term ''controlled by or under common control?''

Q1d. Are there other examples of persons or interests that should be specifically identified as a ''U.S. person'' in the final interpretive guidance?

C. The Definitions and Registration Thresholds

1. Background

The Commission adopted its final rulemaking further defining the terms ''swap dealer'' and ''major swap participant'' jointly with the SEC on April 18, 2012 (''Final Entities Rulemaking'').[31] In the Final Entities Rulemaking, the Commissions, among other things, adopted final rules and interpretive guidance implementing the statutory definitions of the terms ''swap dealer'' and ''major swap participant'' in CEA sections 1a(49) and 1a(33).[32] The final rules and interpretive guidance delineate the activities that cause a person to be a swap dealer and the level of swap positions that cause a person to be an MSP. In addition, the

[28] A primary purpose of Title VII of the Dodd-Frank Act is to address risk to the U.S. financial system created by interconnections in the swaps market. Senator Blanche Lincoln, then Chairman of the Senate Agriculture Committee, noted: ''In 2008, our Nation's economy was on the brink of collapse. America was being held captive by a financial system that was so interconnected, so large, and so irresponsible that our economy and our way of life were about to be destroyed.'' Congressional Record S5818, July 14, 2010, available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-14/pdf/CREC-2010-07-14.pdf.* Senator Jeanne Shaheen stated: ''We need to put in place reforms to stop Wall Street firms from growing so big and so interconnected that they can threaten our entire economy.'' Congressional Record S5888, July 15, 2010, available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-15/pdf/CREC-2010-07-15-senate.pdf.* Senator Debbie Stabenow opined: ''For too long the over-the-counter derivatives market has been unregulated, transferring risk between firms and creating a web of fragility in a system where entities became too interconnected to fail.'' Congressional Record S5905, July 15, 2010, available at *http://www.gpo.gov/fdsys/pkg/CREC-2010-07-15/pdf/CREC-2010-07-15-senate.pdf.* As these legislative records indicate, Congress sought to ensure that the Commission would be able to effectively regulate activities in the swaps marketplace, wherever those activities may occur, that are significantly connected with or affect the U.S. financial system.

[29] The term ''United States'' means the United States, its states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and any other territories or possessions of the United States government, its agencies or instrumentalities.

[30] *See* 17 CFR 230.902(k); SEC Release No. 33–6863, 55 FR 18306, May 2, 1990.

[31] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant;'' Final Rule, 77 FR 30596, May 23, 2012.

[32] 7 U.S.C. 1a(49) and 1a(33).

Commissions adopted rules concerning the statutory exceptions from the definition of swap dealer, including a de minimis exception.[33]

Section 1.3(ggg)(4) of the Commission's regulations sets forth a de minimis threshold of swap dealing, which takes into account the notional amount of a person's swap dealing activity over the prior 12 months.[34] When a person engages in swap dealing transactions above that threshold, such person meets the definition of a swap dealer under section 1a(49) of the CEA,[35] and is required to register as a swap dealer with the Commission under CEA section 4s(b).[36] Sections 1.3(jjj)(1) and 1.3(lll)(1) of the Commission's regulations set forth swap position thresholds for the MSP definition.[37] When a person holds swap positions above those thresholds, such person meets the definition of an MSP under section 1a(33) of the CEA,[38] and is required to register as an MSP with the Commission under CEA section 4s(b).[39]

Once required to register as a swap dealer or MSP, the person becomes subject to all of the requirements imposed on swap dealers or MSPs under Title VII, respectively, including but not limited to sections 2(a)(13), 4r, and 4s of the CEA,[40] which require swap dealers and MSPs to comply with various prudential, business conduct, reporting, clearing, and trading requirements. Unless a swap dealer or MSP applies for and is granted a limited designation, all of the swap dealer's or MSP's swap activities are subject to such requirements, not only the swap activities that trigger the registration requirement.

The statutory definitions of swap dealer and MSP do not contain any geographic limitations and do not distinguish between U.S. and non-U.S. swap dealers or non-U.S. MSPs.[41] Similarly, the Final Entities Rulemaking does not contain any such limitations or distinctions. In this proposed interpretive guidance, the Commission interprets section 2(i) of the CEA as it applies to the provisions in the CEA related to swap dealers and MSPs and, accordingly, proposes the general manner in which the swap dealer and MSP registration and related requirements apply to the activities of non-U.S. persons, and to the foreign branches, agencies, subsidiaries and affiliates of U.S. persons and U.S. branches of non-U.S. persons.

2. Swap Dealer

In enacting the swap dealer definition and the associated requirements for swap dealers Congress sought to ensure that those entities that engage in more than a de minimis level of swap dealing be considered swap dealers, register, and be regulated as swap dealers.[42] In the Final Entities Rulemaking, the Commission established a notional threshold for determining whether a person engages in more than a de minimis level of swap dealing and therefore must register as a swap dealer. The Commission proposes that the level of swap dealing that is substantial enough to require a person to register as a swap dealer when conducted by a U.S. person also constitutes a ''direct and significant connection'' within the meaning of section 2(i)(1) of the CEA when such dealing activities are conducted by a non-U.S. person with U.S. persons as counterparties. Accordingly, consistent with this interpretation and the Commission's Final Entities Rulemaking, the Commission proposes that non-U.S. persons who engage in more than a de minimis level of swap dealing with U.S. persons would be required to register as swap dealers.[43]

The Commission does not propose, however, that a non-U.S. person should include, in determining whether the de minimis threshold is met, the notional value of dealing transactions with foreign branches of registered U.S. swap dealers. This is intended to address the concerns of non-U.S. persons who may be required to register as a swap dealer, notwithstanding the fact that their dealing activities with U.S. persons as counterparties are limited to foreign branches of registered U.S. swap dealers. In such cases, the Dodd-Frank Act transactional requirements (or comparable requirement) would nevertheless apply to swaps with those foreign branches and, thus, there is little concern that this exclusion could be used to engage in swap activities outside of the Dodd-Frank Act (comparable) requirements. Accordingly, the Commission believes that it would be appropriate and consistent with section 2(i) to allow non-U.S. persons to conduct swap dealing activities with registered U.S. swap dealers outside the United States (through their foreign branches), without triggering registration as a swap dealer as a result.

i. Aggregation of Swaps

The Commission notes that section 1.3(ggg)(4) of the Commission's regulations requires that a person include, in determining whether its swap dealing activities exceed the de minimis threshold, the aggregate notional value of swap dealing transactions entered into by its affiliates under common control. It is the Commission's view that this provision would require that a non-U.S. person, in determining whether its swap dealing transactions exceed the de minimis threshold, include the aggregate notional value of any swap dealing transactions between U.S. persons and any of its non-U.S. affiliates under common control, and any swap dealing transactions of any of its non-U.S. affiliates under common control where

[33] Section 1a(49)(D) of the CEA (7 U.S.C. 1a(49)(D)) provides that ''[t]he Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.'' This provision is implemented in section 1.3(ggg)(4) of the Commission's regulations.

[34] The limitations associated with the de minimis exception apply only in connection with a person's dealing activities. *See* Final Entities Rulemaking at Part II.D. As used in this release, the meaning of the term ''swap dealing'' is consistent with that used in the Final Entities Rulemaking.

[35] 7 U.S.C. 1a(49).

[36] 7 U.S.C. 6s(b). *See also* Registration of Swap Dealers and Major Swap Participants, Final Rule 77 FR 2613, 2616, Jan. 19, 2012 (''Final Registration Rule'').

[37] *See* Final Entities Rulemaking at Parts IV.B. and IV.E.

[38] 7 U.S.C. 1a(33).

[39] 7 U.S.C. 6s(b). *See also* Final Registration Rule at 2616, Jan. 19, 2012, available at *http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-792a.pdf.*

[40] 7 U.S.C. 2(a)(13), 6r, and 6s.

[41] The statutory definition of MSP in CEA section 1a(33)(B) (7 U.S.C. 1a(33)(B)) does state, however, that the Commission should consider the impact on ''the financial system of the United States'' in defining what constitutes a ''substantial position'' for purposes of the definition. The Commission believes that this proposed interpretative guidance, which focuses on a non-U.S. person's swap positions with U.S. persons, is consistent with this statutory directive.

[42] The Commission does not believe it is necessary for purposes of this proposed interpretive guidance to determine whether such swaps or activities between a non-U.S. person and a U.S. person are located within or outside of the United States. Regardless of whether the location of any particular swap or activity is within or outside the United States, the Commission proposes that it is the aggregate notional amount of such swap dealing activities that is relevant for registration. Accordingly, the consideration of such swaps within the meaning of CEA section 2(i) for the purposes of this proposed guidance does not necessarily mean that the Commission considers such activities to be outside of the United States. *See* Final Entities Rulemaking at Part II.B.4. for what constitutes ''swap dealing activities.''

[43] In the Final Entities Rulemaking, the Commissions codified exclusions from the dealer definition for swaps and security-based swaps between majority-owned affiliates. The Commission construes section 2(i) to apply such inter-affiliates exclusion to swaps between a non-U.S. person and its U.S. affiliate or between two affiliated non-U.S. persons. *See* section 1.3(ggg)(6)(i) of the Commission's regulations.

the obligations of such non-U.S. affiliates are guaranteed by U.S. persons.[44]

The Commission is not proposing, however, that a non-U.S. person should include, in this determination, the notional value of dealing transactions in which its U.S. affiliates engage. Again, the Commission's proposed interpretation is that a direct and significant connection with activities in, or effect on, U.S. commerce, in these circumstances, exists when non-U.S. persons conduct more than a de minimis level of swap dealing activities with U.S. persons. In the case of an affiliated group of non-U.S. persons under common control, the Commission believes that all of the affiliated non-U.S. persons should aggregate the notional value of their swap dealing transactions with U.S. persons (and their swap dealing transactions with non-U.S. persons in which such person's obligations are guaranteed by U.S. persons), in order to determine, in effect, the level of swap dealing activities conducted by the affiliated group of non-U.S. persons in the aggregate. However, since the focus is on the level of activity conducted by non-U.S. persons, swap dealing transactions of affiliated U.S. persons should not be included.[45]

ii. Regular Business

As stated in the Final Entities Rulemaking, a person is required to apply the de minimis test only if it determines it is engaged in swap dealing activity under the rule further defining the term ''swap dealer,'' which excludes swap activities that are not part of ''a regular business.'' A person that is not engaged in swap dealing as part of ''a regular business'' is not required to apply the de minimis test and is not a swap dealer under the CEA.

The Commission proposes that a non-U.S. person without a guarantee from a U.S. person applying the swap dealer definition should determine first whether its swap activities with respect to U.S. persons as counterparties qualify as swap dealing activity under the rule further defining the term ''swap dealer'' and the exclusion of swap activities that are not part of ''a regular business.'' Thus, for example, a non-U.S. person without a guarantee that determines it is not engaged in swap dealing as part of ''a regular business'' with respect to U.S. persons as counterparties is not required to apply the de minimis test or to register as a swap dealer. This would be true even if the non-U.S. person were engaged in swap dealing as part of ''a regular business'' with respect to non-U.S. persons as counterparties.

The determination of whether a person is engaged in swap dealing activity involves application of the interpretive guidance in Part II.A.4. of the Final Entities Rulemaking, which provides for consideration of the relevant facts and circumstances. Similarly, the Commission proposes that the determination by a non-U.S. person without a guarantee of whether it is engaged in swap dealing as part of ''a regular business'' with respect to U.S. persons as counterparties (as opposed to its swap dealing activity with respect to non-U.S. persons as counterparties) will depend on consideration of the relevant facts and circumstances in light of the interpretive guidance in the Final Entities Rulemaking.

Request for Comment

Q2. Do commenters agree that in determining whether it is a swap dealer, a non-U.S. person without a guarantee from a U.S. person should consider whether it is engaged in swap dealing as part of ''a regular business'' only with respect to U.S. persons (as opposed to non-U.S. persons)? Why or why not? In such an analysis, would it generally be feasible for the non-U.S. person to distinguish swap dealing activities with U.S. persons from swap dealing activities with non-U.S. persons and are there any practical difficulties in this approach?

3. Major Swap Participant

The MSP definition and associated requirements for MSPs reflect Congress' direction that any entity that holds swap positions above a level that could, among other things, ''significantly impact the financial system of the United States,'' be considered an MSP and register and be regulated as an MSP.[46] In the Final Entities Rulemaking, the Commission further defined MSP to clarify when a person must register. The Commission believes that the level of swap positions that is substantial enough to require a person to register as an MSP when held by a U.S. person, also constitutes a ''direct and significant connection'' within the meaning of section 2(i) of the CEA when such positions reflect swaps between a non-U.S. person and U.S. persons. Consistent with this interpretation and the Commission's Final Entities Rulemaking, a non-U.S. person who holds swap positions where a U.S. person is a counterparty above the specified MSP thresholds would qualify and register as an MSP.

i. Aggregation of Positions

In determining whether it is an MSP, a non-U.S. person would ''count'' all of its swap positions where its counterparty is a U.S. person, but would not ''count'' any swap position where its counterparty is a non-U.S. person. As with swap dealing transactions, a swap between a non-U.S. person and a U.S. person, or a swap between a non-U.S. person and another non-U.S. person under which the first non-U.S. person's obligations are guaranteed by a U.S. person, in and of itself may have a direct and significant connection with activities in, or effect on, commerce of the United States within the meaning of section 2(i) of the CEA. Similarly, for purposes of applying section 2(i) of the CEA to the MSP definition and associated requirements, the Commission believes the appropriate focus is on whether in the aggregate such swaps have a direct and significant connection with activities in, or effect on, U.S. commerce, rather than whether each particular swap has such a connection or effect.

4. Relevance of Guarantees

In the event of a default or insolvency of a non-U.S. swap dealer with more than a de minimis level of swap dealing with U.S. persons or a non-U.S. MSP with more than the threshold level of swap positions with U.S. persons, the swap dealer's or MSP's U.S. counterparties could be adversely affected. Such an event may adversely affect numerous persons engaged in commerce within the United States, disrupt such commerce, and increase risks of a widespread disruption to the financial system in the United States. For that reason, the Commission has a significant regulatory interest in ensuring that the swap dealer or MSP is managing the risks of such swaps appropriately and ensuring that its U.S. counterparties receive the appropriate protections under the CEA.

Similar effects on U.S. persons and on the U.S. financial system may occur in the event of a default or insolvency of a non-U.S. person with respect to a non-de minimis level of swap dealing transactions, or swap positions above the MSP threshold, of the non-U.S. person that are guaranteed by a U.S. person. In these circumstances, and regardless of whether the non-U.S. person's counterparty is a U.S. person or

[44] *See* Final Entities Rulemaking at Part II.D.4.

[45] *See also* 77 FR at 2616.

[46] CEA section 1a(33)(B), 7 U.S.C. 1a(33)(B). As is the case with respect to swap dealers, the Commission does not believe it is necessary, for purposes of this proposed interpretative guidance, to determine whether such swaps or activities between a non-U.S. person and a U.S. person are located within or outside of the United States.

a non-U.S. person, the risk of default by the non-U.S. person with respect to its guaranteed swaps ultimately rests with a U.S. person. If there is a default by the non-U.S. person, the U.S. person would be held responsible to settle those obligations. However, the Commission's interpretive guidance with respect to guarantees differs slightly for swap dealers and MSPs.[47] We therefore discuss the two cases separately here.

Accordingly, the Commission proposes to interpret CEA section 2(i) as requiring a non-U.S. person to register with the Commission as a swap dealer when the aggregate notional value of its swap dealing activities with U.S. persons, or of its swap dealing activities with non-U.S. persons where the dealing non-U.S. person's obligations are guaranteed, or its ability to pay or perform its obligations thereunder are otherwise formally supported, by a U.S. person, exceed the de minimis level of swap dealing as set forth in section 1.3(ggg)(4) of the Commission's regulations. The Commission believes that when the aggregate level of swap dealing by a non-U.S. person, considering both swaps directly with U.S. persons and swaps with non-U.S. persons under which the dealing non-U.S. person's obligations are guaranteed by a U.S. person, exceeds the de minimis level of swap dealing, the dealing non-U.S. person's activities have the requisite ''direct and significant connection with activities in, or effect on, commerce of the United States.''

With respect to whether a person is an MSP, the Commission's interpretive guidance in the Final Entities Rulemaking provides that a person's swap positions are attributed to a parent, other affiliate or guarantor to the extent that the counterparties to those positions would have recourse to the other entity in connection with the position unless the first person is itself subject to capital regulation by the CFTC or SEC (e.g., including where the first person is a swap dealer or MSP) or is a U.S. entity regulated as a bank in the United States.[48] In accordance with this guidance, the Commission proposes that swap positions between a non-U.S. person, where the obligations of such non-U.S. person thereunder are guaranteed by a U.S. person, should be attributed to the U.S. person (and not the non-U.S. person) in determining whether either person is an MSP. In other words, the Commission proposes to interpret CEA section 2(i) as requiring non-U.S. persons to register with the Commission as MSPs when their swaps with U.S. persons, disregarding any such positions where their obligations thereunder are guaranteed by U.S. persons, exceed a relevant MSP threshold as set forth in the Final Entities Rulemaking.

5. Summary

This proposed interpretation may be summarized as follows. In determining whether a non-U.S. person is engaged in more than a de minimis level of swap dealing, the person should consider the aggregate notional value of:

- Swap dealing transactions between it (or any of its non-U.S. affiliates under common control) and a U.S. person (other than foreign branches of U.S. persons that are registered swap dealers); and
- Swap dealing transactions (or any swap dealing transactions of its non-U.S. affiliates under common control) where its obligations or its non-U.S. affiliates' obligations thereunder are guaranteed by U.S. persons.

In determining whether a non-U.S. person holds swap positions above the MSP thresholds, the person should consider the aggregate notional value of:

- Any swap position between it and a U.S. person (but its swap positions where its obligations thereunder are guaranteed by a U.S. person generally should be attributed to that U.S. person and not included in the non-U.S. person's determination); and
- Any swap between another non-U.S. person and a U.S. person, where it guarantees the obligations of the non-U.S. person thereunder.

D. Foreign Branches, Agencies, Affiliates, and Subsidiaries of U.S. Swap Dealers and U.S. Branches, Agencies, Affiliates, and Subsidiaries of Non-U.S. Swap Dealers

1. Foreign [49] Branches and Agencies of U.S. Swap Dealers

The Commission understands that branches and agencies are not separate legal entities; rather, a branch or agency is a corporate extension of its principal entity.[50] Given that a foreign branch or agency has no legal existence separate from a U.S. principal entity that is the legal counterparty to swaps, the Commission would apply the Dodd-Frank Act registration requirements to a U.S. person and its foreign branches and agencies on an entity-wide basis.[51] Under this approach, the Commission would require the U.S. person (principal entity) to register as the swap dealer. Although certain duties and obligations may be performed by the foreign branches and agencies, the U.S. person (principal entity) would remain responsible for compliance with all of the applicable responsibilities.[52]

2. Foreign Affiliates or Subsidiaries of U.S. Persons

A number of large financial institutions operate a ''central booking'' model under which swaps are solicited or negotiated through their branches, agencies, affiliates or subsidiaries but are booked, directly or indirectly, in a single legal entity (typically the parent company) for balance sheet and financial reporting purposes.[53] In some cases, the affiliate which has negotiated the swap may be acting as a principal and may transfer the exposure to the central booking entity by back-to-back transactions or other arrangements. In other cases, the affiliate that has arranged or negotiated the trade may be acting as an agent for the central booking entity, in which case the central booking entity may enter into the swap transaction so that the central booking entity is, as a contractual matter, directly facing the third-party counterparty in the swap transaction. Given these various ways of implementing a central booking arrangement, the question arises as to how the Dodd-Frank Act registration

[47] For purposes of this interpretive guidance, references to a guarantee are intended to refer not only to traditional guarantee of payment or performance of the related swaps, but would also include other formal arrangements to support the non-U.S. person's ability to pay or perform its obligations, including without limitation, liquidity puts and keepwell agreements.

[48] *See* Final Entities Rulemaking at part IV.H.

[49] In this release, the term ''foreign'' is used interchangeably with the term ''non-U.S.''

[50] *See, e.g.,* Federal Reserve Bank of New York, Foreign Banks and the Federal Reserve, at *http://www.ny.frb.org/aboutthefed/fedpoint/fed26.html* (last visited Feb. 26, 2012). *See also* Federal Reserve Board, ''Policy Statement on the Supervision and Regulation of Foreign Banking Organizations,'' Feb. 23, 1979, Federal Reserve Regulatory Service 4–835; Federal Reserve Board Supervisory Letter SR 08–09 re: Consolidated Supervision of Bank Holding Companies and the Combined U.S. Operations of Foreign Banking Organizations, Oct. 16, 2008. *See also* Institute of International Bankers, Comment Letter at 15–16, Jan. 10, 2011 (acknowledging the principal-agency relationship and advocating for the Commission to adopt a registration regime predicated on the intermediating activities of U.S. branches and agencies).

[51] The Commission notes that the supervisory authority of the Office of the Comptroller of the Currency extends to foreign branch offices of national banks under its jurisdiction.

[52] Under this model, the foreign branch or agency of the U.S. person would not register separately as a swap dealer.

[53] *See* Seven Foreign Banks (''Many foreign banks operate and manage their global swaps businesses out of a single entity * * *. [T]his entity is the central booking vehicle, acting as principal to counterparties in the U.S. and other jurisdictions.'') (Jan. 11, 2011); IIB (Jan. 10, 2011). These comment letters are available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=903.*

requirement would apply to the affiliate facing the third party counterparty and the central booking entity or guarantor. The following subsection addresses which entity must register as a swap dealer in such central ''booking'' model.

The Commission proposes to interpret section 2(i) of CEA so that the U.S. person who books the swaps would be required to register as a swap dealer, regardless of whether the swaps were directly booked by the U.S. person (by such person becoming a party to the swap) or indirectly transferred to the U.S. person (by way of a back-to-back swap or other arrangement). In either case, the affiliate may also be required to register as a swap dealer if by its activities it independently meets the definition of swap dealer.

3. U.S. Branches, Agents, Affiliates, or Subsidiaries of Non-U.S. Persons

A similar analysis applies when a non-U.S. person is the booking entity (*i.e.,* the legal counterparty) to swaps.[54] Under these circumstances, even if the U.S. branch, agency, affiliate, or subsidiary of a non-U.S. person engages in solicitation or negotiation in connection with the swap entered into by the non-U.S. person, the Commission proposes to interpret section 2(i) of CEA such that the Dodd-Frank Act requirements, including the registration requirement, applicable to swap dealers also apply to the non-U.S. person.

Request for Comment

Q3. Please provide comments regarding all aspects of the Commission's proposed interpretation, including particular alternative interpretations the Commission should consider in assessing whether a non-U.S. person should be required to register as a swap dealer or MSP.

Q3a. Do commenters agree that the Commission should determine whether a non-U.S. person, without a guarantee from a U.S. affiliate, is a swap dealer based solely upon the aggregate notional amount of swap dealing activities with U.S. persons as counterparties? Why or why not?

Q3b. Do commenters agree that the Commission should determine whether a non-U.S. person is a swap dealer based on the aggregate notional amount of swap dealing activities when the swap dealing obligations of such non-U.S. person are guaranteed by a U.S. person? Why or why not?

Q3c. Do commenters agree that in determining whether a non-U.S. person is a swap dealer, the notional amount of swap dealing activities conducted by it and all of its non-U.S. affiliates under common control should be aggregated together? Why or why not? Should the Commission further interpret the phrase ''under common control'' and, if so, how should the Commission define ''common control'' for aggregation purposes? Should the notional amount of swap dealing activities conducted by its U.S. affiliates also be included?

Q3d. Are any other aspects of a swap—such as, for example, the place of execution or clearing—relevant to the determination of whether a non-U.S. person is a swap dealer?

Q3e. Do commenters agree that the Commission should determine whether a non-U.S. person is an MSP based solely on its swap positions with U.S. persons as counterparties? If not, why?

Q3f. Do commenters agree that, in determining whether a non-U.S. person is an MSP, its swap positions guaranteed by a U.S. person should be attributed to such U.S. person and not the non-U.S. person? If not, why? How should the Commission's determination change when some but not all of the non-U.S. person's swap obligations are guaranteed by a U.S. person?

Q3g. Are any other aspects of a swap—such as the place of execution or clearing—relevant to the determination of whether a non-U.S. person is an MSP?

Q4. As noted above, the Commission does not propose that a non-U.S. person should include, in determining whether the swap dealer de minimis threshold is met, the notional value of swap dealing transactions with foreign branches of U.S. swap dealers. Noting the risk-based, as opposed to activities-based, nature of the MSP registration category and related calculations, the Commission seeks comment on whether a non-U.S. person should include, in determining whether it is required to register as an MSP, its swap positions with foreign branches of U.S. swap dealers.

Q5. Under the aggregation description above, a non-U.S. person, in determining whether the de minimis threshold is met, must include the notional value of dealing swaps by its non-U.S. affiliates under common control. The Commission requests comments on whether, to the extent that any such non-U.S. affiliate is registered with the Commission as a swap dealer, the notional value of dealing swaps entered into by such registered swap dealer should not be aggregated with the notional value of dealing swaps entered into by the other non-U.S. affiliates under common control.[55]

Q7. Should the Commission consider any other types of swap dealing transactions by non-U.S. persons to determine whether a non-U.S. person is a swap dealer? If so, which ones?

Q8. Do commenters agree that the Commission should exclude the swap dealing transactions of a non-U.S. person from the determination of whether such non-U.S. person qualifies as a swap dealer, where the counterparty to such dealing swaps are non-U.S. persons (guaranteed or not)? Should the Commission exclude swap obligations in excess of a capped guaranty provided by a U.S. person (*i.e.,* a guaranty that limits the U.S. person's liability to a capped or maximum amount)? How should the Commission account for the reduced risks assumed by a U.S. person guaranteeing certain or all swaps of a particular non-U.S. person under that non-U.S. person's master agreements with non-U.S. counterparties, where the U.S. person's liability under the guarantee is limited?

Q9. Can a limited designation registration as provided for in the statutory definitions of the terms ''swap dealer'' and ''major swap participant'' be used to address the Commission's regulatory interests under the Dodd-Frank Act with respect to cross-border swap activities? If so, how?

[54] As further described below (in subsection E), a number of commenters urge the Commission to treat a branch of a non-U.S. bank as a separate legal entity. Extending this logic to the registration context, these commenters support the registration and regulation of the branch. The Commission notes CEA section 1a(39) (7 U.S.C. 1a(39)) states that the term ''prudential regulator'' shall mean the Board of Governors of the Federal Reserve System in the case of a swap dealer, MSP, security-based swap dealer, or major security-based swap participant that is—

(v) any bank holding company [citation omitted], any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)) that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this Act or with the [SEC] as a security-based swap dealer or major security-based swap participant).

Clearly, Congress contemplated that foreign banks that become bank holding companies by virtue of the presence of a branch or a subsidiary in the United States may be regulated as swap dealers.

[55] Thus, within an affiliated group of firms, the dealing activities of any affiliates that are registered with the Commission as swap dealers would not be included in considering whether any of the other affiliates are required to register as a swap dealer. However, all non-U.S. affiliates under common control that are not so registered would have to aggregate the notional value of any swap dealing transactions with U.S. persons (or where the obligations of such non-U.S. affiliates are guaranteed by U.S. persons) to determine if such swap dealing transactions exceed the de minimis threshold of swap dealing activity.

III. Cross-Border Application of the CEA's Swap Provisions and Implementing Regulations

A non-U.S. person who meets or exceeds the de minimis threshold for swap dealers or the position thresholds for MSPs would be required to register with the Commission as a swap dealer or MSP, respectively, pursuant to the procedures prescribed in Part 3 of the Commission's regulations.[56] Once registered, the non-U.S. swap dealer or non-U.S. MSP would become subject to all of the substantive requirements under Title VII of the Dodd-Frank Act that apply to registered swap dealers or MSPs, including but not limited to sections 2(a)(13), 4r, and 4s of the CEA, with respect to all of their swap activities. In other words, the requirements under Title VII of the Dodd-Frank Act related to swap dealers and MSPs apply to all registered swap dealers and MSPs, irrespective of where such dealer or MSP is based. In exercising its authority over non-U.S. swap dealers, non-U.S. MSPs, or cross-border activities, however, the Commission will be informed by canons of statutory construction regarding the application of its authority in a manner consistent with principles of international comity. A brief discussion of these principles follows.

A. Principles of International Comity

The Supreme Court has held that ''an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.'' [57] Jurisdiction is generally construed, ''to avoid unreasonable interference with the sovereign authority of other nations.'' [58] The most relevant Supreme Court precedents addressing the application of international comity concepts in determining the extraterritorial applicability of federal statutes come from antitrust.[59] In these cases, the Supreme Court has noted that the principles in the Third Restatement of Foreign Relations Law are relevant to the interpretation of U.S. law:

> This rule of construction reflects principles of customary international law—law that (we must assume) Congress ordinarily seeks to follow. *See* Restatement (Third) of Foreign Relations Law of the United States §§ 403(1), 403(2) (1986). * * *
>
> This rule of statutory construction cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws. It thereby helps the potentially conflicting laws of different nations work together in harmony—a harmony particularly needed in today's highly interdependent commercial world.[60]

In accordance with judicial and executive branch precedent and guidance in interpreting statutes with cross-border application, the Commission proposes that it should exercise its regulatory authority over cross-border activities in a manner consistent with these principles of statutory construction and international comity.[61] The Commission is therefore guided by these principles as discussed in these precedents.[62]

B. Proposed Application of the CEA's Swap Provisions to Non-U.S. Swap Dealers and Foreign Branches, Agencies, Affiliates, and Subsidiaries of U.S. Swap Dealers

1. Categories of Regulatory Requirements

Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for swap dealers and MSPs. This framework is an important element of the ''improve[d] financial architecture'' that Congress intended in enacting the Dodd-Frank Act and its goal of reducing systemic risk and enhancing market transparency.[63] Among other things, a registered swap dealer or MSP must comport with certain standards (and regulations as the Commission may promulgate) governing risk management, internal and external business conducts, and reporting. Further, U.S. swap dealers and MSPs, once registered, are required to comply with all of the requirements applicable to swap dealers and MSPs for all their swaps, not just the swaps that make them a swap dealer or MSP.

A number of commenters recommended that the Commission, in interpreting the cross-border applicability of the Dodd-Frank Act swap provisions to a registered swap dealer or MSP, should distinguish between requirements that: (i) Apply at an entity level (*i.e.,* to the firm as a whole); or (ii) apply at a transactional level (*i.e.,* to the individual transaction or trading relationship).[64] These commenters believed that requirements that relate to the core operations of a firm should be applied on an entity-level basis and would include the capital and related prudential requirements and recordkeeping, as well as certain risk mitigation requirements (*e.g.,* information barriers and the designation of a chief compliance officer). The commenters stated that other requirements, such as margin, should apply on transaction-by-transaction basis and only to swaps with U.S. counterparties.[65]

The Commission agrees with the commenters that the various Dodd-Frank Act swap provisions can be conceptually divided into the following

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[56] *See* 7 U.S.C. 6s(b)(1). *See also* 77 FR 2613, 2616, Jan. 19, 2012.

[57] *Hartford Fire Ins. Co. et al.,* 509 U.S. 764, 817 (1993); *F. Hoffmann-La Roche, Ltd.,* 542 U.S. 155, 164 (2004).

[58] *F. Hoffmann-La Roche, Ltd.,* 542 U.S. at 164.

[59] *See* notes 82–84, supra.

[60] *F. Hoffmann-La Roche, Ltd.,* 542 U.S. at 164–65. Specifically, section 403 of the Restatement (Third) of Foreign Relations Law states, in relevant part:

> Whether exercise of jurisdiction over a person or activity is unreasonable is determined by evaluating all relevant factors, including, where appropriate:
>
> (a) The link of the activity to the territory of the regulating state, *i.e.,* the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;
>
> (b) The connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;
>
> (c) The character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;
>
> (d) The existence of justified expectations that might be protected or hurt by the regulation;
>
> (e) The importance of the regulation to the international political, legal, or economic system;
>
> (f) The extent to which the regulation is consistent with the traditions of the international system;
>
> (g) The extent to which another state may have an interest in regulating the activity; and
>
> (h) The likelihood of conflict with regulation by another state.

[61] For a similar consideration of the application of principles of international comity by federal agencies in the enforcement of the antitrust laws, *see* U.S. Department of Justice and the Federal Trade Commission, Antitrust Enforcement Guidelines for International Operations, Apr. 1995, which is available at *http://www.justice.gov/atr/public/guidelines/internat.htm.*

[62] The Commission has a longstanding policy of considering principles of international comity in its rulemakings and interpretations. For example, the Commission adopted regulatory amendments that codify its longstanding policy towards foreign brokers. *See* Exemption from Registration for Certain Foreign Persons, 72 FR 63976, 63978–79, Nov. 14, 2007. The amendments codified a registration exemption for any foreign person functioning as an introducing broker, commodity pool operator or commodity trading advisor solely on behalf of customers located outside the United States, if all commodity interest transactions are submitted for clearing to a registered FCM. *See id.* at 63978–79. In addition, the Commission amended § 3.12 of the Commission's regulations to codify a registration exemption for any individual located in the branch office of a Commission registrant that does not solicit or accept orders from customers located in the United States.

[63] S. Rep. No. 111–176, at 228 (2010), available at *http://www.gpo.gov/fdsys/pkg/CRPT-111srpt176/pdf/CRPT-111srpt176.pdf.*

[64] *See, e.g.,* SIFMA (Feb. 3, 2011), ISDA (Jan. 24, 2011), Cleary (Sept. 20, 2011), Seven Foreign Banks (Jan. 11, 2011), and Twelve Foreign Banks (Feb. 17, 2011).

[65] *See* SIFMA (Feb. 3, 2011).

two categories: (i) Entity-Level Requirements, which apply to a swap dealer or MSP to the firm as a whole; and (ii) Transactional-Level Requirements, which apply to the individual swap. A discussion of the Entity-Level Requirements is set out in the section immediately below, followed by discussions of the Transaction-Level Requirements.

2. Entity-Level Requirements

The Entity-Level Requirements under Title VII of the Dodd-Frank Act and the Commission's regulations promulgated thereunder relate to: (i) Capital adequacy; (ii) chief compliance officer; (iii) risk management; (iv) swap data recordkeeping; (v) swap data reporting (''SDR Reporting''); and (vi) physical commodity swaps reporting (''Large Trader Reporting''). The Entity-Level Requirements apply to registered swap dealers and MSPs across all their swaps without distinctions as to the counterparty or the location of the swap.

The first subcategory of Entity-Level Requirements relating to capital adequacy, chief compliance officer, risk management, and swap data recordkeeping relate to risks to a firm as a whole. These requirements address and manage risks that arise from a firm's operation as a swap dealer or MSP. Individually, they represent a key component of a firm's internal risk controls. Collectively, they constitute a firm's first line of defense against financial, operational, and compliance risks that could lead to a firm's default or failure.

At the core of a robust internal risk controls system is the firm's capital—and particularly, how the firm identifies and manages its risk exposure arising from its portfolio of activities.[66] Equally foundational to the financial integrity of a firm is an effective internal risk management process, which must be comprehensive in scope and reliant on timely and accurate data regarding its swap activities. To be effective, such system must have a strong and independent compliance function. These internal controls-related requirements—namely, the requirements related to chief compliance officer, risk management, swap data recordkeeping—are designed to serve that end. Given their functions, this subcategory of Entity-Level Requirements must be applied on a firm-wide basis to effectively address risks to the swap dealer or MSP as a whole.

The second subcategory of Entity-Level Requirements, namely, SDR Reporting and Large Trader Reporting, relates more closely to the Commission's market surveillance program. Among other things, data reported to swap data repositories (''SDRs'') will enhance the Commission's understanding of concentrations of risks within the market, as well as promote a more effective monitoring of risk profiles of market participants in the swaps market. Large Trader Reporting, along with an analogous reporting system for futures contracts, is essential to the Commission's ability to conduct effective surveillance of the futures market and their economically equivalent swaps. Given the functions of these reporting requirements, each must be applied across swaps, irrespective of the counterparty or the location of the swap, in order to ensure that the Commission has a comprehensive and accurate picture of market activities. Otherwise, the intended benefits of these Entity-Level Requirements would be significantly compromised, if not undermined. Each of the Entity-Level Requirements is discussed in the subsections that follow.

i. Capital Requirements

Section 4s(e)(3)(A) of the CEA specifically directs the Commission to set capital requirements for swap dealers and MSPs that are not subject to the capital requirements of prudential regulators (hereinafter referred to as ''non-bank swap dealers or MSPs'').[67] These requirements must: ''(1) [h]elp ensure the safety and soundness of the swap dealer or major swap participant; and (2) [be] appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.'' [68] Pursuant to section 4s(e)(3), the Commission proposed regulations, which would require non-bank swap dealers and MSPs to hold a minimum level of adjusted net capital (*i.e.,* ''regulatory capital'') based on whether the non-bank swap dealer or MSP is: (i) Also a futures commission merchant (''FCM''); (ii) not an FCM, but is a non-bank subsidiary of a bank holding company; or (iii) neither an FCM nor a non-bank subsidiary of a bank holding company.[69] The purpose of the capital requirement is to reduce the likelihood and cost of a swap dealer's or MSP's default by requiring a financial cushion that can absorb losses in the event of the firm's default.

ii. Chief Compliance Officer

Section 4s(k) requires that each swap dealer and MSP designate an individual to serve as its chief compliance officer (''CCO'') and specifies certain duties of the CCO.[70] Pursuant to section 4s(k), the Commission recently adopted § 3.3, which requires swap dealers and MSPs to designate a CCO who would be responsible for administering the firm's compliance policies and procedures, reporting directly to the board of directors or a senior officer of the swap dealer or MSP, as well as preparing and filing with the Commission a certified report of compliance with the CEA.[71] The chief compliance function is an integral element of a firm's risk management and oversight and the Commission's effort to foster a strong culture of compliance within swap dealers and MSPs.

[66] By way of illustration, consistent with the purpose of the capital requirement, which is intended to reduce the likelihood and cost of a swap dealer's default by requiring a financial cushion, a swap dealer's or MSP's capital requirements would be set on the basis of its overall portfolio of assets and liabilities.

[67] *See* 7 U.S.C. 6s(e)(3)(A). Section 4s(e) of the CEA explicitly requires the adoption of rules establishing capital and margin requirements for swap dealers and MSPs, and applies a bifurcated approach that requires each swap dealer and MSP for which there is a prudential regulator to meet the capital and margin requirements established by the applicable prudential regulator, and each swap dealer and MSP for which there is no prudential regulator to comply with the Commission's capital and margin regulations. *See* 7 U.S.C. 6s(e). Further, systemically important financial institutions (''SIFIs'') that are not futures commission merchants would be exempt from the Commission's capital requirements, and would comply instead with Federal Reserve Board requirements applicable to SIFIs, while nonbank (and non-futures commission merchant) subsidiaries of U.S. bank holding companies would calculate their Commission capital requirement using the same methodology specified in Federal Reserve Board regulations applicable to the bank holding company, as if the subsidiary itself were a bank holding company. The term ''prudential regulator'' is defined in CEA section 1a(39) as the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

[68] *See* 7 U.S.C. 6s(e)(3)(A).

[69] *See* 7 U.S.C. 6s(e). *See also* Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802, May 12, 2011. ''The Commission's capital proposal for [swap dealers] and MSPs includes a minimum dollar level of $20 million. A non-bank [swap dealer] or MSP that is part of a U.S. bank holding company would be required to maintain a minimum of $20 million of Tier 1 capital as measured under the capital rules of the Federal Reserve Board. [A swap dealer] or MSP that also is registered as an FCM would be required to maintain a minimum of $20 million of adjusted net capital as defined under [proposed] section 1.17. In addition, a [swap dealer] or MSP that is not part of a U.S. bank holding company or registered as an FCM would be required to maintain a minimum of $20 million of tangible net equity, plus the amount of the [swap dealer's] or MSP's market risk exposure and OTC counterparty credit risk exposure.'' *See id.* at 27817.

[70] *See* 7 U.S.C. 6s(k).

[71] *See* 17 CFR 3.3.

iii. Risk Management

Section 4s(j) of the CEA requires each swap dealer and MSP to establish internal policies and procedures designed to, among other things, address risk management, monitor compliance with position limits, prevent conflicts of interest, and promote diligent supervision, as well as maintain business continuity and disaster recovery programs.[72] The Commission recently adopted implementing sections 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, and 23.607 of its regulations.[73] The Commission also recently adopted section 23.609 of its regulations, which requires certain risk management procedures for swap dealers or MSPs that are clearing members of a derivatives clearing organization (''DCO'').[74] Collectively, these requirements help to establish a robust and comprehensive internal risk management program for swap dealers and MSPs, which is critical to effective systemic risk management for the overall swaps market.

iv. Swap Data Recordkeeping

CEA section 4s(f)(1)(B) requires swap dealers and MSPs to keep books and records for all activities related to their business.[75] Section 4s(g)(1) requires swap dealers and MSPs to maintain trading records for each swap and all related records, as well as a complete audit trail for comprehensive trade reconstructions.[76] Pursuant to these provisions, the Commission adopted §§ 23.201 and 23.203, which require swap dealers and MSPs to keep records including complete transaction and position information for all swap activities, including documentation on which trade information is originally recorded.[77] Swap dealers and MSPs also must comply with Part 46 of the Commission's regulations, which addresses the recordkeeping requirements for swaps entered into before the date of enactment of the Dodd-Frank Act (''pre-enactment swaps'') and data relating to swaps entered into on or after the date of enactment but prior to the compliance date of the swap data reporting rules (''transition swaps'').[78]

v. Swap Data Reporting

CEA section 2(a)(13)(G) requires all swaps, whether cleared or uncleared, to be reported to a registered SDR.[79] CEA section 21 requires SDRs to collect and maintain data related to swaps as prescribed by the Commission, and to make such data electronically available to regulators.[80] Swap dealers and MSPs would be required to comply with Part 45 of the Commission's regulations, which sets forth the specific transaction data that reporting counterparties and registered entities must report to a registered SDR; and Part 46, which addresses the recordkeeping requirements for pre-enactment swaps and data relating to transition swaps. Among other things, data reported to SDRs will enhance the Commission's understanding of concentrations of risks within the market, as well as promote a more effective monitoring of risk profiles of market participants in the swaps market. The Commission also believes that there are benefits that will accrue to swap dealers and MSPs as a result of the timely reporting of comprehensive swap transactional data and consistent data standards for recordkeeping, among other things. Such benefits include more robust risk monitoring and management capabilities for swap dealers and MSPs, which in turn will improve the monitoring of their current swap market positions.

vi. Physical Commodity Swaps Reporting (Large Trader Reporting)

CEA section 4t[81] authorizes the Commission to establish a large trader reporting system for significant price discovery swaps (of which economically equivalent swaps subject to part 20 reporting are a subset) in order to implement the statutory mandate in CEA section 4a[82] for the Commission to establish and monitor position limits, as appropriate, for physical commodity swaps. Pursuant thereto, the Commission adopted part 20 rules requiring swap dealers, among other entities, to submit routine position reports on certain physical commodity swaps and swaptions.[83] Additionally, part 20 rules require that swap dealers, among other entities, comply with certain recordkeeping obligations.

3. Transaction-Level Requirements

The Transaction-Level Requirements under Title VII of the Dodd-Frank Act and the Commission's regulations (proposed or adopted) include: (i) Clearing and swap processing; (ii) margining and segregation for uncleared swaps; (iii) trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards.

The Transaction-Level Requirements—with the exception of external business conduct standards—relate to both risk mitigation and market transparency. Certain of these requirements, such as clearing and margining, serve to lower a firm's risk of failure. In that respect, these Transaction-Level Requirements could be classified as Entity-Level Requirements. Other Transaction-Level Requirements—such as trade confirmation, swap trading relationship documentation, and portfolio reconciliation and compression—also serve important risk mitigation functions, but are less closely connected to risk mitigation of the firm as a whole and thus are more appropriately applied

[72] 7 U.S.C. 6s(j).

[73] 7 CFR 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, and 23.607; *see also* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rule, Futures Commission Merchant and Introducing Broker Conflicts of Interest Rule, and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, Apr. 3, 2012 (relating to risk management program, monitoring of position limits, business continuity and disaster recovery, conflicts of interest policies and procedures, general information availability, and antitrust considerations, respectively).

[74] 17 CFR 23.609, *see also* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, Apr. 9, 2012. Also, swap dealers must comply with § 23.608, which prohibits swap dealers providing clearing services to customers from entering into agreements that would: (i) Disclose the identity of a customer's original executing counterparty; (ii) limit the number of counterparties a customer may trade with; (iii) impose counterparty-based position limits; (iv) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (v) prevent compliance with specified time frames for acceptance of trades into clearing.

[75] 7 U.S.C. 6s(f)(1)(B).

[76] 7 U.S.C. 6s(g)(1).

[77] 17 CFR 23.201 and 23.203; *see also* 77 FR 20128, Apr. 3, 2012. These requirements also require a swap dealer to provide the Commission with regular updates concerning its financial status, as well as information concerning internal corporate procedures.

[78] 17 CFR 46.1 *et seq.;* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 76 FR 22833, Apr. 25, 2011.

[79] 7 U.S.C. 2(a)(13)(G).

[80] 7 U.S.C. 24a.

[81] 7 U.S.C. 6t.

[82] 7 U.S.C. 6a.

[83] Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, July 22, 2011. The rules require regular position reporting and recordkeeping by clearing organizations, clearing members, and swap dealers for any principal or counterparty accounts with reportable position in physical commodity swaps. In general, the rules apply to swaps that are linked to either the price of any of the 46 physical commodity futures contracts the Commission enumerates (Covered Futures Contracts) or the price of the physical commodity at the delivery location of any of the Covered Futures Contracts.

on a transaction-by-transaction basis. Likewise, the requirements related to trade execution, trade confirmation, daily trading records, and real-time public reporting have a closer nexus to the transparency goals of the Dodd-Frank Act, as opposed to addressing the risk of a firm's failure.

As a result, whether a particular Dodd-Frank Act requirement should apply on a transaction-by-transaction basis in the context of cross-border activity for purposes of section 2(i) of the CEA requires the Commission to exercise some degree of judgment, including considerations of international comity. Each of the Transaction-Level Requirements is discussed below.

i. Clearing and Swap Processing

Section 2(h) of the CEA requires a swap to be submitted for clearing to a DCO if the Commission has determined that the swap is required to be cleared, unless one of the parties to the swap is eligible for an exception from the clearing requirement and elects not to clear the swap.[84] Clearing via a DCO eliminates the risk of settlement for swap dealers or MSPs and their counterparties. Closely interlocked with the clearing requirement are the following swap processing requirements: (i) The recently finalized § 23.506, which requires swap dealers and MSPs to submit swaps promptly for clearing; and (ii) § 23.610, which establishes certain standards for swap processing by swap dealers and MSPs that are clearing members of a DCO.[85] Together, the clearing and swap processing requirements promote safety and soundness of swap dealers and MSPs, and aim to protect their counterparties from the risk of a default.

ii. Margin and Segregation Requirements for Uncleared Swaps

Section 4s(e) of the CEA requires the Commission to set margin requirements for swap dealers (and MSPs) that trade in swaps that are not cleared.[86] The margin requirements aim to reduce the risk of swap dealers, MSPs, and their counterparties taking on excessive risks posed by uncleared swaps without having adequate financial backing to fulfill their obligations under the swap. In addition, with respect to swaps that are not submitted for clearing, section 4s(l) requires that a swap dealer or MSP notify the counterparty of its right to require segregation of funds provided as margin, and upon such request, to segregate the funds with a third-party custodian for the benefit of the counterparty. In this way, the segregation requirement enhances the safety of margin and thereby provides additional financial protection to counterparties.

iii. Trade Execution Requirement

Integrally linked to the clearing requirement is the trade execution requirement, which is intended to bring the trading of mandatorily cleared swaps onto regulated exchanges. Specifically, section 2(h)(8) of the CEA provides that unless a clearing exception applies and is elected, a swap that is subject to a clearing requirement must be executed on a designated contract market (''DCM'') or swap execution facility (''SEF''), unless no such DCM or SEF makes the swap available to trade.[87] By requiring the trades of mandatorily cleared swaps to be executed on an exchange—with its attendant pre- and post-trade transparency and safeguards to ensure market integrity—the trade execution requirement furthers the statutory goals of financial stability, market efficiency and enhanced transparency.

iv. Swap Trading Relationship Documentation

CEA Section 4s(i) requires each swap dealer and MSP to conform to Commission standards for the timely and accurate confirmation, processing, netting, documentation and valuation of swaps. Pursuant thereto, the Commission has proposed § 23.504(a) of its regulations, which would require swap dealers and MSPs to ''establish, maintain and enforce written policies and procedures'' to ensure that the swap dealer or MSP executes written swap trading relationship documentation.[88] Under proposed §§ 23.505(b)(1), 23.504 (b)(3), and 23.504(b)(4) of the Commission's regulations, the swap trading relationship documentation must include, among other things: all terms governing the trading relationship between the swap dealer or MSP and its counterparty; credit support arrangements; investment and re-hypothecation terms for assets used as margin for uncleared swaps, and custodial arrangements.[89] Further, the swap trading relationship documentation requirement applies to all swaps with registered swap dealers and MSPs. A robust swap documentation standard may promote standardization of documents and transactions, which are key conditions for central clearing, and lead to other operational efficiencies, including improved valuation and risk management.

v. Portfolio Reconciliation and Compression

CEA section 4s(i) directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by swap dealers and MSPs. Pursuant to CEA section 4s(i), the Commission proposed §§ 23.502 and 23.503 of its regulations, which would require swap dealers and MSPs to perform portfolio reconciliation and compression, respectively, for all swaps.[90] Portfolio reconciliation is a post-execution risk management tool to ensure accurate confirmation of a swap's terms and to identify and resolve any discrepancies between counterparties regarding the valuation of the swap. Portfolio compression is a post-trade processing and netting mechanism that is intended to ensure timely, accurate processing and netting of swaps.[91] Proposed § 23.503(c) would require all swap dealers and MSPs to participate in bilateral compression exercises and/or multilateral portfolio compression exercises conducted by their self-regulatory organizations (''SROs'') or DCOs of which they are members.[92] Further, participation in multilateral

[84] 7 U.S.C. 2(h)(1), (7).

[85] 17 CFR 23.506, 23.610 and Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, Apr. 9, 2012.

[86] *See* 7 U.S.C. 6s(e). *See also* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732, 23733–40, Apr. 28, 2011. Section 4s(e) explicitly requires the adoption of rules establishing margin requirements for swap dealers and MSPs, and applies a bifurcated approach that requires each swap dealer and MSP for which there is a prudential regulator to meet the margin requirements established by the applicable prudential regulator, and each swap dealer and MSP for which there is no prudential regulator to comply with the Commission's margin regulations. In contrast, the segregation requirements in section 4s(1) do not use a bifurcated approach—that is, all swap dealers and MSPs are subject to the Commission's rule regarding notice and third party custodians for margin collected for uncleared swaps.

[87] *See* 7 U.S.C. 2(h)(8).

[88] *See* Swap Trading Relationship documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, Feb. 8, 2011.

[89] The requirements under section 4s(i) relating to trade confirmations is a Transaction-Level Requirement. Accordingly, proposed section 23.504(b)(2), which requires a swap dealer's and MSP's swap trading relationship documentation to include all confirmations of swaps, will apply on a transaction-by-transaction basis.

[90] *See* Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, Dec. 28, 2010.

[91] For example, the reduced transaction count may decrease operational risk as there are fewer trades to maintain, process and settle.

[92] *See* 17 CFR 23.503(c), 75 FR 81519, Dec. 28, 2010.

portfolio compression exercises is mandatory for dealer-to-dealer trades.

vi. Real-Time Public Reporting

Section 2(a)(13) of the CEA directs the Commission to promulgate rules providing for the public availability of swap transaction data on a real time basis.[93] In accordance with this mandate, the Commission promulgated part 43 of its rules on December 20, 2011, which provide that all ''publicly reportable swap transactions'' must be reported and publicly disseminated.[94] The real-time dissemination of swap transaction and pricing data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk (*e.g.,* liquidity risk).[95]

vii. Trade Confirmation

Section 4s(i) of the CEA [96] requires that each swap dealer and MSP must comply with the Commission's regulations prescribing timely and accurate confirmation of swaps. The Commission has proposed § 23.501, which requires, among other things, a timely and accurate confirmation of all swaps and life cycle events for existing swaps.[97] Timely and accurate confirmation of swaps—together with portfolio reconciliation and compression—are important post-trade processing mechanisms for reducing risks and improving operational efficiency.[98]

viii. Daily Trading Records

Pursuant to section CEA 4s(g)(1), the Commission adopted § 23.202 of its regulations, which requires swap dealers and MSPs to maintain daily trading records, including records of trade information related to pre-execution, execution, and post-execution data that is needed to conduct a comprehensive and accurate trade reconstruction for each swap. The final rule also requires that records be kept of cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the swap dealer or MSP.[99] Accurate and timely recordkeeping regarding all phases of a swap can serve to greatly enhance a firm's internal supervision, as well as the Commission's ability to detect and address market abuses.

ix. External Business Conduct Standards

Pursuant to CEA section 4s(h), the Commission has adopted external business conduct rules, which establish business conduct standards governing the conduct of swap dealers and MSPs in dealing with their counterparties in entering into swaps.[100] Broadly speaking, these rules are designed to enhance counterparty protection by significantly expanding the obligations of swap dealers and MSPs towards their counterparties. Under these rules, swap dealers and MSPs will be required, among other things, to conduct due diligence on their counterparties to verify eligibility to trade, provide disclosure of material information about the swap to their counterparties, provide a daily mid-market mark for uncleared swaps and, when recommending a swap to a counterparty, make a determination as to the suitability of the swap for the counterparty based on reasonable diligence concerning the counterparty.

4. Application of the Entity-Level Requirements [101]

The Dodd-Frank Act takes a comprehensive and integrated approach to the regulation of the swaps market. The first subcategory of Entity-Level Requirements, relating to capital adequacy, chief compliance officer, risk management, and swap data recordkeeping are at the heart of such framework. Specifically, these Entity-Level Requirements ensure that registered swap dealers and MSPs implement and maintain a comprehensive and robust system of internal controls to ensure the financial integrity of the firm, and in turn, the protection of the financial system. In this respect, the Commission has strong supervisory interests in applying the same rigorous standards, or comparable standards, to non-U.S. swap dealers and non-U.S. MSPs whose swaps activities or positions are substantial enough to require registration under the CEA. Requiring such swap dealers and MSPs to rigorously monitor and address the risks they incur as part of their day-to-day businesses would lower the registrants' risk of default—and ultimately protect the public and the financial system.

Therefore, the Commission proposes to interpret CEA section 2(i) so as to require that registered non-U.S. swap dealers and non-U.S. MSPs comply with all of the first subcategory of Entity-Level Requirements.[102] In consideration of principles of international comity, the Commission further proposes to interpret CEA section 2(i) so as to permit substituted compliance with foreign regulations for these Entity-Level Requirements in certain circumstances. The circumstances in which the Commission proposes to consider permitting substituted compliance are explained below in the Section III.C. of this proposed interpretative guidance.

With respect to SDR Reporting, the Commission believes that direct access to data concerning all swaps in which a registered swap dealer or MSP enters is essential in order for the Commission to carry out its supervisory mandates concerning, among other things, increased transparency, systemic risk mitigation, market monitoring, and market abuse prevention. For example, data reported to SDRs would be critical to ensure that the Commission has a comprehensive and accurate picture of swap dealers and MSPs that are its registrants, including the gross and net counterparty exposures of swaps of all swap dealers and MSPs, to the greatest extent possible. Similarly, swap data reported by swap dealers to the Commission under Large Trader Reporting is critical to the Commission's ability to effectively monitor and oversee the swaps market.

For these reasons, the Commission proposes to interpret CEA section 2(i) so as to require non-U.S. swap dealers and non-U.S. MSPs to report all of their swaps to a registered SDR [103] and to require non-U.S. swap dealers to report

[93] *See* 7 U.S.C. 2(a)(13). *See also* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1183, Jan. 9, 2012.

[94] Part 43 defines a ''publicly reportable swap transaction'' as (i) any swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or (ii) any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of a swap. *See* 77 FR 1182, Jan. 9, 2012.

[95] *See* 77 FR 1182, 1183.

[96] 7 U.S.C. 6s(i).

[97] *See* 17 CFR 23.501; *see also* 75 FR 81519, Dec. 28, 2010.

[98] In addition, the Commission notes that proposed § 23.504(b)(2) requires a swap dealer's and MSP's swap trading relationship to include all confirmations of swaps.

[99] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, Apr. 3, 2012.

[100] *See* 7 U.S.C. 6s(h). *See also Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties,* 77 FR 9734, 9822–29, Feb. 17, 2012.

[101] Appendix A in this release provides a chart describing the application of the Entity-Level Requirements to U.S. and non-U.S. swap dealers and MSPs.

[102] As discussed above in Section II.D of this proposed interpretive guidance, the Commission considers foreign branches and agencies of U.S. swap dealers to be the agents of their U.S. person. Thus, in all instances, the U.S. swap dealer would be responsible for complying with all Entity-Level Requirements.

[103] *See* 7 U.S.C. 2(a)(13)(G). *See also* 77 FR at 2197–2211.

all of their reportable positions under part 20. At the same time, the Commission recognizes the interests of foreign jurisdictions with respect to swaps between a non-U.S. swap dealer or non-U.S. MSP with a non-U.S. counterparty and therefore, further interprets CEA section 2(i) so as to permit substituted compliance with comparable foreign regimes for SDR Reporting and Large Trader Reporting.

5. Application of the Transaction-Level Requirements [104]

As discussed above, Transaction-Level Requirements serve to mitigate risks to swap dealers and MSPs and their counterparties, to promote greater market transparency and efficiency in the U.S. swaps market, and to provide counterparty protections. The Commission has a strong supervisory interest in ensuring that these Dodd-Frank Act requirements apply to swaps between a registered swap dealer or MSP (regardless of whether they are a U.S. person or non-U.S. person) and U.S. persons as counterparties, with a limited exception. Accordingly, the Commission proposes to interpret section 2(i) in a manner so as to require non-U.S. swap dealers and non-U.S. MSPs to comply with Transaction-Level Requirements for all of their swaps with U.S. persons, other than foreign branches of U.S. persons, as counterparties.[105] Consistent with the foregoing rationale, in most cases, the Commission does not intend to permit substituted compliance for the Transaction-Level Requirements for swaps between non-U.S. swap dealers or non-U.S. MSPs and U.S. persons.[106] The following discussion provides proposed guidance on the application of the Transaction-Level Requirements to swaps by non-U.S. swap dealers and non-U.S. MSPs with non-U.S. counterparties.

i. Clearing and Swap Processing, Margin (and Segregation), Trade Execution, Swap Trading Relationship Documentation, Portfolio Reconciliation and Compression, Real-Time Public Reporting, Trade Confirmation, and Daily Trading Records

With respect to swaps between non-U.S. swap dealers or non-U.S. MSPs and non-U.S. counterparties, the Commission proposes to interpret section 2(i) so as to require non-U.S. swap dealers and non-U.S. MSPs to comply with the clearing and swap processing and margin (and segregation) requirements for swaps where the non-U.S. counterparty's performance is guaranteed by (or otherwise supported by) a U.S. person.[107] The Commission interprets section 2(i) in this manner because where a non-U.S. counterparty's swap obligations are guaranteed by a U.S. person, the risk of non-performance by the counterparty rests with the U.S. person. If the non-U.S. person defaults on its obligations under the swaps, then the U.S. person guarantor will be held responsible (or would bear the cost) to settle those obligations. In circumstances in which a U.S. person ultimately bears the risk of non-performance of a counterparty to a swap with a non-U.S. swap dealer or non-U.S. MSP, the Commission has a strong regulatory interest in the performance of the swap by both parties to the swap, and hence the application of these Transaction-Level Requirements with respect to such swaps is warranted. In consideration of international comity principles, the Commission further interprets CEA section 2(i) so as to permit substituted compliance for these Transaction-Level Requirements.[108]

Similarly, the requirements relating to portfolio reconciliation and compression can serve to significantly mitigate risks to the counterparties, and by extension, the U.S. person guaranteeing the non-U.S. counterparty's obligations under the swap. Specifically, portfolio reconciliation serves to diminish the risk of disputes for the counterparties. Portfolio compression also has the effect of lowering the risk for the counterparties by diminishing operational risks. Other Transaction-Level Requirements—trade confirmation, swap trading relationship documentation, and daily trading records—by ensuring that swaps are properly documented and recorded, serve to protect the counterparties, as well as the U.S. person that is the guarantor.[109]

The Commission also proposes to interpret section 2(i) so as to require non-U.S. swap dealers and non-U.S. MSPs to comply with the trade execution requirement for swaps where the non-U.S. counterparty's performance is guaranteed by a U.S. person.

The trade execution requirement is linked to the clearing requirement and for that reason, should be treated in same manner as the clearing requirement for regulatory purposes, which better ensures the effectiveness of the clearing and trading mandates. Requiring swaps to be traded on a regulated exchange provides market participants with greater pre- and post-trade transparency. Similarly, real-time public reporting improves price discovery by requiring that swap transaction and pricing data be made publicly available. Together, trade execution and real-time reporting requirements provide important information for risk management purposes and bring greater efficiency to the marketplace—to the benefit of the individual counterparties. As with the other Transaction-Level Requirements, the Commission further interprets CEA section 2(i), consistent with comity principles, so as to permit substituted compliance with respect to these transactions.

Similar concerns regarding the flow of risk to the United States are raised by an entity that effectively operates as a ''conduit'' for a U.S. person to execute swaps outside the Dodd-Frank Act regime. The Commission recognizes that such conduits may be used legitimately to move economic risks from one person within a corporate group to another in order to manage the group's overall swap portfolio. The Commission also recognizes that, in many cases, the

[104] Appendix B in this release provides charts describing the application of the Transaction-Level Requirements to U.S. and non-U.S. swap dealers and MSPs.

[105] Moreover, the U.S. counterparties, as well as the non-U.S. swap dealers and non-U.S. MSPs, may have an expectation that the Dodd-Frank Act will extend to them and their swaps.

[106] Section III.D. (below) addresses the application of the Entity and Transaction-Level Requirements to branches, agencies, subsidiaries, and affiliates of U.S. swap dealers.

[107] As noted above in Section II.B of this proposed interpretive guidance, risk may be imported into the U.S. In these circumstances, and regardless of whether the non-U.S. swap dealer's counterparty is a U.S. person or a non-U.S. person, the risk of default by the non-U.S. swap dealer with respect to its swap dealing transactions ultimately rests with a U.S. person.

[108] Below (in Section IV), the Commission describes the specific circumstances under which it proposes to permit compliance with a foreign regulatory regime's clearing requirement for swaps entered into by non-U.S. swap dealers, non-U.S. MSPs, and other non-U.S. market participants in lieu of compliance with a Commission-issued clearing requirement.

[109] As noted above, the portfolio compression and swap trading relationship documentation requirements apply to all swaps between registered swap dealers. Thus, where the non-U.S. counterparty is another U.S.-registered swap dealer, these Transaction-Level Requirements apply. The Commission believes that this inclusive approach is necessary given the significant role registered swap dealers play in the swaps market.

conduits could be subject to prudential and risk management requirements and may lay off the risk of its dealing activities on an individual or portfolio basis through transactions that would be subject to and reported under the Dodd-Frank Act.

Nevertheless, the Commission is concerned that given the nature of the relationship between the conduit and the U.S. person, the U.S. person is directly exposed to risks from and incurred by the conduit. The Commission is further concerned that rather than execute a swap opposite a U.S. counterparty, which would be subject to the Dodd-Frank transactional requirements, a U.S. swap dealer or MSP could execute a swap with its foreign affiliate or subsidiary, which could then execute a swap with a non-U.S. third-party in a jurisdiction that is unregulated or lack comparable transactional requirements. Accordingly, the Commission proposes to apply these Transaction-Level Requirements to swaps in which: (i) A non-U.S. counterparty is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. counterparty regularly enters into swaps with one or more other U.S. affiliates or subsidiaries of the U.S. person; and (iii) the financials of such non-U.S. counterparty are included in the consolidated financial statements of the U.S. person. Further, the Commission interprets CEA section 2(i), consistent with comity principles, so as to permit substituted compliance for these Transaction-Level Requirements with respect to swaps between a non-U.S. swap dealer or non-U.S. MSP and such affiliate conduit.

Conversely, and consistent with the foregoing rationale, the Commission proposes to interpret section 2(i) so as to not require the application of any of these Transaction-Level Requirements to swaps between a non-U.S. swap dealer or non-U.S. MSP with a non-U.S. counterparty that is not guaranteed by a U.S. person. In such instances, the Commission recognizes that foreign regulators have a strong supervisory interest in swaps occurring within their territories involving their domiciles.

ii. External Business Conduct Standards

With respect to the external business conduct standards, the Commission proposes to interpret section 2(i) to not require non-U.S. swap dealers and non-U.S. MSPs to comply with these requirements for swaps with a non-U.S. counterparty (whether or not guaranteed by a U.S. person). The Commission believes that sales practice concerns related to swaps between non-U.S. persons taking place outside the United States implicate fewer U.S. supervisory concerns and, when weighed together with the supervisory interests of foreign regulatory regimes, may not warrant application of these requirements.[110]

C. Substituted Compliance With Respect to Particular Requirements

The Commission believes that a cross-border policy that allows for flexibility in the application of the CEA, while ensuring the high level of regulation contemplated by the Dodd-Frank Act and avoiding potentially conflicting regulations is consistent with principles of international comity. It would also advance the congressional directive that the Commission act in order to ''promote effective and consistent global regulation of swaps * * * as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to regulation (including fees) of swaps * * *.'' [111] Practical considerations—namely, the limitations in the Commission's supervisory resources and its ability to effectively oversee and enforce application of the CEA to cross-border transactions and activities—also support the Commission applying its regulations in a manner that is focused on the primary objectives of the CEA.

In light of the foregoing considerations, the Commission proposes to permit a non-U.S. swap dealer or non-U.S. MSP, once registered with the Commission, to comply with a substituted compliance regime under certain circumstances. Substituted compliance means that a non-U.S. swap dealer or non-U.S. MSP is permitted to conduct business by complying with its home regulations, without additional requirements under the CEA. Specifically, the Commission proposes to permit non-U.S. swap dealers and non-U.S. MSPs to substitute compliance with the requirements of the relevant home jurisdiction's law and regulations, in lieu of compliance with the CEA and Commission's regulations, if the Commission finds that such requirements are comparable to cognate requirements under the CEA and Commission regulations. As discussed below, this approach would build on the Commission's longstanding policy of recognizing comparable regulatory regimes based on international coordination and comity principles with respect to cross-border activities involving futures (and options).[112]

The Commission proposes that it would make comparability determinations on an individual requirement basis, rather than the foreign regime as a whole. In the Commission's view, this would allow for a more flexible registration process as it would permit a non-U.S. person to become registered as a swap dealer or MSP even in the absence of comparability with respect to all of the Dodd-Frank Act requirements. Rather, a non-U.S. swap dealer or non-U.S. MSP may be permitted to comply with regulations in its home jurisdiction to the extent that the comparability standard is met but also may be required to comply with certain of the Dodd-Frank Act requirements where comparable home regulation(s) are lacking.[113]

In this section, the Commission broadly outlines the circumstances under which the Commission would permit a non-U.S. swap dealer or non-U.S. MSP to rely on foreign regulation and supervision as a substitute for compliance by that swap dealer or MSP with some or all of the requirements that would otherwise be applicable to it under Title VII of the Dodd-Frank Act.

1. Entity-Level Requirements

The Commission anticipates that non-U.S. persons that will register as swap dealers or MSPs with the Commission will likely have their principal swap business in their home jurisdiction. The Commission believes that it would be appropriate to permit substituted compliance with respect to the previously-described Entity-Level Requirements where the non-U.S. swap dealers or non-U.S. MSPs are subject to comparable regulation in their home jurisdiction. In these circumstances, the Commission notes that the home

[110] That is to say, just as the Commission would have a strong supervisory interest in regulating and enforcing sales practices associated with activities taking place within the United States, the foreign regulators would have a similar claim to overseeing sales practices occurring within their jurisdiction.

[111] *See* section 752 of the Dodd-Frank Act. As the Supreme Court observed in *Hoffmann-LaRoche,* principles of international comity ''help[ ] the potentially conflicting laws of different nations work together in harmony—a harmony particularly needed in today's highly interdependent commercial world.'' *See Hoffmann-LaRoche,* 542 U.S. at 164–165.

[112] For example, under part 30 of the Commission's regulations, if the Commission determines that compliance with the foreign regulatory regime would offer comparable protection to U.S. customers and there is an appropriate information-sharing arrangement between the home supervisor and the Commission, the Commission has permitted foreign brokers to comply with their home regulations (in lieu of the applicable Commission regulations), subject to appropriate conditions. *See, e.g.,* 67 FR 30785 (Apr. 29, 2002); 71 FR 6759 (Feb. 9, 2001).

[113] The details concerning the Commission's comparability determinations will be discussed below in Section IV.

regulator would have a primary relationship to the swap dealer or MSP, which, coupled with the firm-wide focus of the Entity-Level Requirements, supports permitting substituted compliance.

With respect to SDR Reporting, the Commission proposes to permit substituted compliance with respect to swaps by non-U.S. swap dealers and non-U.S. MSPs with non-U.S. counterparties (whether or not such non-U.S. swap dealers or such non-U.S. MSPs are guaranteed by U.S. persons), provided that the Commission has direct access to the swap data for such non-U.S. swap dealers or non-U.S. MSPs that is stored at the foreign trade repository. The Commission believes that this approach would minimize burdens on non-U.S. swap dealers and non-U.S. MSPs that report their swaps data to a foreign trade repository, while ensuring that the Commission has access to information that is critical to its oversight of these entities.

2. Transaction-Level Requirements

As discussed above, the Commission proposes to interpret section 2(i) so as to require non-U.S. swap dealers and non-U.S. MSPs to comply with the clearing and swap processing, margining (and segregation), trade execution, swap trading relationship documentation, portfolio reconciliation and compression, real-time public reporting, trade confirmation, and daily trading records requirements for all transactions with a counterparty that is a U.S. person or is a non-U.S. person whose swap obligations are guaranteed by a U.S. person.

The Commission would not permit substituted compliance with respect to these Transaction-Level Requirements for a non-U.S. swap dealer's or non-U.S. MSP's transactions with a counterparty that is a U.S. person, with a limited exception.[114] Generally, where swaps are executed with U.S. persons, the Commission's supervisory interests in such transactions, which have a direct and significant connection with activities in, or effect on, U.S. commerce, and in ensuring the protection of U.S. counterparties weighs in favor of applying the requirements of the CEA, rather than permitting substituted compliance.

On the other hand, it may be more appropriate for the Commission to permit substituted compliance for transactions between a non-U.S. swap dealer or non-U.S. MSP and a non-U.S. person whose swap obligations are guaranteed by a U.S. person. In such circumstances, the foreign jurisdiction has a strong supervisory interest in regulating the activities of its domiciles occurring within its territory. At the same time, given that such transactions are guaranteed by a U.S. person, the Commission also has a strong supervisory interest in ensuring that the protections of the Dodd-Frank Act are extended to the U.S. guarantor. In consideration of these factors, the Commission would permit substituted compliance with respect to these Transaction-Level Requirements for swaps between a non-U.S. swap dealer or non-U.S. MSP with a non-U.S. person guaranteed by a U.S. person, as well as swaps with non-U.S. affiliate conduits. Substituted compliance, the Commission believes, would address its supervisory concerns while, at the same time, minimizing the potential for conflicts with the requirements under foreign jurisdictions.[115]

D. Application of Entity-Level and Transaction-Level Requirements to Branches, Agencies, Affiliates, and Subsidiaries of U.S. Swap Dealers

1. Foreign Branches and Agencies of U.S. Swap Dealers

As discussed above, the Commission considers foreign branches and agencies of a U.S. person to be a part of the U.S. person. Thus, the Commission proposes that the U.S. person would be legally responsible for complying with all applicable Entity-Level Requirements. Further, the Commission proposes to require compliance with most of the Transaction-Level Requirements (*i.e.,* clearing and swap processing, margin (and segregation) for uncleared swaps, trade execution, real-time reporting, trade confirmation, swap trading relationship documentation, daily trading records, and portfolio reconciliation and compression), irrespective of whether the counterparty is a U.S. person or non-U.S. person.[116] This approach is appropriate in light of the Commission's strong supervisory interests in entities that are part or an extension of a U.S.-based swap dealer.

The Commission further interprets section 2(i) to permit substituted compliance with respect to the Transaction-Level Requirements for swaps with certain counterparties. Specifically, the Commission proposes to permit substituted compliance for swaps between a foreign branch of a U.S. person and a non-U.S. person counterparty (both whose obligations under the swap are guaranteed by a U.S. person and those that are not). Given that the counterparty is a non-U.S. person, coupled with the supervisory interest of the foreign jurisdiction in the execution and clearing of trades occurring in that jurisdiction, the Commission believes that it would be appropriate to permit the parties to comply with comparable foreign requirements. In doing so, the Commission notes that, as discussed in further detail below, its recognition of substituted compliance would be based on an evaluation of whether the requirements of the home jurisdiction are comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations based on a consideration of all relevant factors, including, among other things: (i) The comprehensiveness of the foreign regulator's supervisory compliance program; and (ii) the authority of such foreign regulator to support and enforce its oversight of the registrant's branch or agency with regard to such activities to which substituted compliance applies.

In limited circumstances where foreign regulations are not comparable, the Commission believes that it could be appropriate to permit foreign branches and agencies of U.S. swap dealers to comply with the transaction-level requirements applicable to entities domiciled or doing business in the foreign jurisdiction, rather than the Transaction-Level Requirements that would otherwise be applicable to the U.S. person's activities.[117] Specifically, the Commission understands that U.S. swap dealers' swap dealing activities through branches or agencies in emerging markets in many cases may not be significant but may be nevertheless an integral element of their global business. Under the circumstances, the Commission proposes that section 2(i) should be interpreted to permit foreign branches and agencies of U.S. swap dealers to

[114] The Commission, however, would continue to permit substituted compliance with comparable home country regulations with respect to Entity-Level Reqirements in this instance. Transactions with a foreign branch or agency of a U.S. swap dealer are discussed below.

[115] As noted above, swaps with non-U.S. persons satisfying each prong of the conduit test would be similarly subject to the Transaction-Level Requirements, provided, however, that the non-U.S. swap dealer or non-U.S. MSP executing such swaps may substitute compliance with a comparable foreign regulatory regime in appropriate cases.

[116] For reasons stated above, with respect to external business conduct standards, the Commission would apply such requirements only for swaps where the counterparty is a U.S. person.

[117] As noted above, the proposed interpretive guidance does not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided herein.

participate in the swap markets in such countries on a limited basis. To be eligible for this exception, the aggregate notional value (expressed in U.S. dollars and measured on a quarterly basis) of the swaps of all foreign branches and agencies in such countries may not exceed five percent of the aggregate notional value (expressed in U.S. dollars and measured on a quarterly basis) of all of the swaps of the U.S. swap dealer. However, the U.S. person relying on this exception would be required to maintain records with supporting information to verify its eligibility for the exception, as well as identify, define, and address any significant risk that may arise from the non-application of the Transaction-Level Requirements.[118]

Further, as discussed above, the Commission proposes that the U.S. person may task its foreign branch or agency to fulfill its regulatory obligations with respect to the Transaction-Level Requirements. The Commission would consider compliance by the foreign branch or agency to constitute compliance with the Transaction-Level Requirements. The Commission proposes, however, that the U.S. person remains responsible for compliance with the Transaction-Level Requirements.

2. Foreign Affiliates and Subsidiaries of U.S. Swap Dealers

With respect to foreign affiliates or subsidiaries of U.S. swap dealers, the Commission proposes that the regulatory requirements that may apply to such affiliate or subsidiary would depend on where their swaps are booked and whether the affiliate or subsidiary engages in activities that trigger swap dealer registration. Where the swaps are directly booked in the U.S. swap dealer but the foreign affiliate or subsidiary facing the counterparty engages in swap dealing and independently meets the definition of a swap dealer, the U.S. swap dealer must comply with all of the swap dealer duties and obligations, including capital-related prudential requirements. The foreign affiliate or subsidiary would be required to separately register as a swap dealer and comply with any Entity-Level and Transaction-Level Requirements applicable to its swap dealing activities.

Thus, if the counterparty facing affiliate or subsidiary was acting merely as a disclosed agent and did not meet the definition of a swap dealer, then the Dodd-Frank Act requirements applicable to swap dealers would not be applicable to the affiliate or subsidiary, provided that the agency relationship was properly documented and the principal remained primarily responsible for the actions of the affiliate. On the other hand, if the counterparty facing affiliate or subsidiary independently met the definition of a swap dealer, then it would be required to register as a swap dealer and satisfy the Dodd-Frank Act requirements applicable to swap dealers, even though all exposure to the swaps it entered into were transferred to a central booking entity, regardless of how those transfers were accomplished.[119] In this scenario, the Commission interprets section 2(i), consistent with the principles of international comity, so as to permit substituted compliance by the foreign affiliate or subsidiary.

Where the counterparty-facing affiliate or subsidiary and the central booking entity are both required to comply with Dodd-Frank Act requirements with respect to swap dealers, the question may arise as to the allocation of responsibilities between the two entities for obligations owed to the third-party counterparty. In such cases, the Commission is of the view that both entities are responsible for satisfying the Dodd-Frank Act requirements applicable to swap dealers and with respect to the performance of an obligation owed to a third party; satisfactory performance by one may satisfy the obligations of both, but an unsatisfactory performance of an obligation owed to a counterparty is a responsibility that will be borne by both entities.

In the case where non-U.S. affiliates or subsidiaries enter into swaps that are not directly booked in a U.S. person, the Commission proposes to interpret section 2(i) so as to require any such foreign affiliates or subsidiaries to register as a swap dealer, assuming that they individually or in the aggregate meet the definition of a swap dealer. Because these affiliates or subsidiaries are domiciled in a foreign jurisdiction and the swaps are not booked in the U.S. swap dealer, these affiliates or subsidiaries would be treated in a manner consistent with respect to non-U.S. swap dealers.[120]

With respect to SDR Reporting, the Commission proposes to interpret section 2(i) so as to require foreign affiliates or subsidiaries of a U.S. swap dealer to comply with the SDR Reporting requirement but would permit substituted compliance, provided that the Commission has direct access to the swap data for these swaps that is stored at the foreign trade repository. As noted above, the Commission believes that this approach would best minimize burdens on counterparties that report their swaps data to a foreign trade repository, while ensuring that the Commission has direct access to the information critical to its oversight of the swaps market.

Request for Comment

Q10. Please provide comments regarding all aspects of the Commission's proposed grouping of requirements into Entity-Level and Transaction-Level Requirements and application of the same to U.S. and non-U.S. persons as discussed above.

Q11. Are there any Entity-Level Requirements that should be reclassified as Transaction-Level Requirements, or vice versa? In particular, the Commission is interested in comments on whether portfolio reconciliation and compression requirements, as central risk mitigation and back-office functions, could or should be categorized as entity-level requirements. Similarly, the Commission is interested in comments on whether clearing and margin and segregation for uncleared swaps should be categorized as Entity-Level requirements.

Q11a. Should the Commission group the Entity-Level Requirements and Transaction-Level Requirements differently for swap dealers and MSPs? If so, how and why?

[118] The Commission solicits comments on all aspects of the proposed exception, including the conditions for eligibility. In particular, the Commission is interested in the types of risk-mitigating measure(s) that should be imposed on a firm as a condition to the exception.

[119] As noted earlier, the booking entity itself also would be required to register as a swap dealer and satisfy the Dodd-Frank Act requirements applicable to swap dealers, even though the affiliate facing the third party counterparty also was required to register as a swap dealer.

[120] Accordingly, the Commission would apply the clearing and swap processing, margining (and segregation), trade execution, swap trading relationship documentation, portfolio reconciliation and compression, real-time public reporting, trade confirmation, and daily trading records requirements to transactions with a non-U.S. person guaranteed by a U.S. person. The Commission further believes that it is appropriate to permit a foreign affiliate or subsidiary to comply with comparable and comprehensive regulatory requirement(s). Substituted compliance would mitigate any burden associated with potentially duplicative or conflicting foreign regulations and is appropriate in light of the foreign regulator's supervisory interests in entities domiciled and operating in its jurisdiction. Similar concerns regarding the risk of non-performance is not present where the non-U.S. counterparty is not guaranteed or similarly supported by a U.S. person, and therefore, the Commission proposes to not apply the Transaction-Level Requirements with respect to such swaps.

Q11b. Should the real-time reporting and trade execution requirements be treated in the same manner as the external business conduct standards?

Q12. Please provide specific comments regarding the proposed application of the Transaction-Level Requirements to swaps with counterparties that are U.S. persons. Should the Commission permit substituted compliance for swaps between a non-U.S. swap dealer or non-U.S. MSP with a U.S. person?

Q13. Please provide specific comments regarding the proposed application of the Transaction-Level Requirements to swaps with counterparties that are non-U.S. persons.

Q14. Market participants may not be able to determine, in certain cases, whether their counterparties are U.S. persons, non-U.S. persons with a guarantee from U.S. persons, or non-U.S. persons without guarantees. How should the Commission address this issue?

Q15. Please provide comments regarding the Commission's proposed interpretation with respect to non-U.S. swap counterparties whose swap obligations are guaranteed by U.S. persons. Should the interpretation for swaps between non-U.S. swap dealers or non-U.S. MSPs and non-U.S. counterparties whose swap obligations are guaranteed by U.S. persons be different than with respect to swaps between non-U.S. swap dealers or non-U.S. MSPs and U.S. persons (*e.g.,* should fewer Transaction-Level Requirements apply)? If so, how (*e.g.,* which Transaction-Level Requirements should apply)? Should the Commission not permit substituted compliance with respect to the Entity-Level and Transaction-Level Requirements in connection with transactions with non-U.S. persons?

Q15a. Should the Commission permit substituted compliance for some requirements but not others? If so, which ones? Should the applicable requirements be different for non-U.S. swap dealers as compared to non-U.S. MSPs?

Q16. For Entity-Level Requirements, should the Commission not permit substituted compliance for U.S. persons?

Q17. The Commission is aware that some non-U.S. swap dealers or MSPs may be prohibited from reporting swap transaction data to an SDR as a result of their home country's privacy laws, especially with respect to such swap dealer's or MSP's swaps with non-U.S. persons. How should the Commission address the application of the SDR Reporting requirement with respect to these swaps? Should the Commission address the application of such requirements differently with respect to non-U.S. swap dealers and non-U.S. MSPs?

Q18. The Commission seeks comments concerning the proposed disapplication of the external business conduct standards to swaps involving non-U.S. persons. Would it be consistent with the expectations of non-U.S. persons to not apply these requirements to swaps with their local swap dealer, irrespective of whether such dealer is a foreign- or U.S.-based person? Should such requirements apply only to swaps involving the foreign branches or affiliates of a U.S.-based swap dealer?

Q19. Should the Commission interpret section 2(i) so as to not apply the Transaction-Level requirements to the foreign branches of U.S.-swap dealers operating in the emerging markets? If so, is it appropriate to condition eligibility for such an exception in the manner discussed above? Should the Commission permit a higher or lower percentage of swaps to be executed through foreign branches of U.S. registrants in emerging market jurisdictions without comparable regulation? If so, why and what percentage would be appropriate?

Q20. With respect to the exception for foreign branches of a U.S. swap dealer operating in the emerging markets with respect to swaps with a non-U.S. person guaranteed by a U.S. person, should the Commission change the baseline from the aggregate notional value of a firm's swap activities to $8 billion (or certain fixed numerical threshold) so as to not disadvantage small swap dealers?

Q21. The Commission requests comment on its proposed approach of applying the Transaction-Level Requirements to a conduit's swaps as if counterparty were a non-U.S. person that is guaranteed by a U.S. person (*i.e.,* Transaction-Level Requirements will apply, with substituted compliance permitted).

Q22. The Commission requests comment on its proposed definition of ''conduit.'' Are the three prongs of that definition appropriate? If not, how should they be modified? Should the second prong include language that limits application of the conduit test to ''regular'' inter-affiliate transactions moving economic risk, in whole or in part, to the United States. Should the definition of conduit distinguish between different types of counterparties or registration status of such counterparties?

Q23. The Commission requests comment on: (i) The prevalence of cross-border inter-affiliate swaps and the mechanics of moving swap-related risks between U.S. and non-U.S. affiliated entities for risk management and other purposes; (ii) risk implications of cross border inter-affiliate conduit swaps for the U.S. markets; and (iii) specific means to address the risk issues potentially presented by cross-border conduit arrangements.

Q24. The Commission proposed anti-evasion provisions in proposed rule 1.6 of the product definitions joint rulemaking with the SEC.[121] To what extent would inter affiliate conduit transactions be undertaken for purposes of evasion as described in proposed rule 1.6?

Q25. The Commission requests comments on whether substituted compliance should be permitted for swaps entered between a foreign branch of a U.S. person with another foreign branch of a U.S. person.

IV. Substituted Compliance: Process for Comparability Determination

A. Overview

As noted above, the Commission will use its experience exempting foreign brokers from registration as FCMs under its rule 30.10 ''comparability'' findings in developing an approach for swaps. However, the Commission contemplates that it will calibrate its approach to reflect the heightened requirements and expectations under the Dodd-Frank Act. Accordingly, the Commission will examine the regulatory requirements to which non-U.S. swap dealers and non-U.S. MSPs are subject. The Commission will use an outcomes based approach to determine whether these requirements are designed to meet the same regulatory objectives of the Dodd-Frank Act. The Commission contemplates that its approach also will require a more robust and ongoing process of cooperation and coordination between the Commission and the relevant foreign regulatory authority regarding ongoing compliance efforts.

1. Scope of Review

As noted above, the Commission would determine comparability and comprehensiveness by reviewing the foreign jurisdiction's laws and regulations. In making this determination, the Commission may

[121] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011.

find that a jurisdiction has comparable law(s) and regulation(s) in some, but not all, of the applicable Dodd-Frank Act provisions (and related Commission regulations).[122] Similar to its policy under rule 30.10, the Commission would retain broad discretion to determine that the objectives of any program elements are met, notwithstanding the fact that the foreign requirement(s) may not be identical to that of the Commission.[123] However, in cases where the foreign regulatory regime does not achieve the objectives of the Dodd-Frank Act, the Commission proposes to recognize substituted compliance in only those areas that are determined to be comparable and comprehensive to the CEA and Commission regulations.

In evaluating whether a particular foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission would take into consideration all relevant factors, including but not limited to, the scope and objectives of the relevant regulatory requirement(s), and the comprehensiveness of those requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the authority to support and enforce its oversight of the non-U.S. swap dealer or non-U.S. MSP applicant. In this context, comparable does not necessarily mean identical. Rather, the Commission would evaluate whether the home jurisdiction's regulatory requirement is comparable to the regulatory requirement(s) supported and enforced by the Commission.

2. Process

The Commission may recognize the comparability of a foreign regime and permit substituted compliance subject to such terms and conditions as the Commission finds appropriate.[124] Further, similar to its policy under rule 30.10, the Commission would retain broad discretion to determine that the objectives of any program elements are met, notwithstanding the fact that the foreign regulations(s) may not be identical to that of the Commission.

A non-U.S. person may request the Commission's permission to comply with comparable requirements of its home jurisdiction, in lieu of the applicable Dodd-Frank Act requirements, as described above. In lieu of a non-U.S. person requesting substituted compliance, a group of non-U.S. persons from the same jurisdiction, or a foreign regulator, may submit an application for substituted compliance on behalf of non-U.S. persons subject to a foreign supervisory regime.

Such request would be made directly to the Commission in connection with its application to register as a swap dealer or MSP.[125] The Commission anticipates that it would work closely with the National Futures Association to develop the necessary procedural framework.

The Commission would expect that the applicant, at minimum, state with specificity the factual basis for requesting that the Commission recognize comparability with respect to a particular Dodd-Frank Act requirement as described above and include with specificity all applicable legislation, rules and policies. [126]

An applicant would be expected to state that it is licensed and in good standing with the applicant's supervisor(s) in its home country. Further, the Commission expects that, in a substituted compliance situation, it would enter into an appropriate memorandum of understanding (''MOU'') or similar arrangement between the Commission and the relevant foreign supervisor(s). Existing information-sharing and/or enforcement arrangements would be indicative of a foreign supervisor's ability to cooperate with the Commission. However, going forward, the Commission and relevant foreign supervisor(s) would need to establish supervisory MOUs or other arrangements that provide for information sharing and cooperation in the context of supervising swap dealers and MSPs. The Commission contemplates that such a supervisory MOU would establish the type of ongoing coordination activities that would continue on an ongoing basis between the Commission and the foreign supervisor(s), including topics such as, but not limited to, procedures for confirming continuing oversight activities, access to information,[127] on-site visits, and notification and procedures in certain situations.[128]

It is expected that the Commission generally may rely on prior comparability determinations with respect to a particular jurisdiction to facilitate its review of a subsequent applicant's request for recognition of substituted compliance.[129] Subsequent to registration with the Commission, the Commission expects that a non-U.S swap dealer or non-U.S. MSP would notify the Commission of any material changes to information submitted in support of a comparability finding (including, but not limited to, changes in the relevant supervisory or regulatory regime) as the Commission's comparability determination may no longer be valid. In order to avoid an unduly burdensome notification process, the Commission contemplates that it would enumerate the specific foreign requirements or category of requirements which, if changed, would trigger a notification requirement.

Where the Commission proposes a change to its regulations governing swaps, the Commission will evaluate whether the proposed regulatory change would affect the basis upon which a prior comparability finding was made. The Commission would initiate discussions with the affected swap dealers and MSPs and their regulator(s) to determine how to address any possible discrepancy in requirements.

3. Clearing

In response to a number of inquiries, with regard to swaps covered by a

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[122] The Commission anticipates that it would review comparability in the areas described above: (i) Capital requirements; (ii) chief compliance officer (iii) clearing and swap processing; (iv) daily trading records; (v) margin (and segregation) requirements for uncleared swap transactions; (vi) physical commodity swaps reporting; (vii) portfolio reconciliation and compression; (viii) real-time public reporting; (ix) SDR Reporting; (x) risk management; (xi) swap data recordkeeping; (xii) swap trading relationship documentation; (xiii) trade confirmation (xiv) trade execution.

[123] The Commission would retain broad enforcement authority, including anti-fraud and anti-manipulation authority, with respect to the subject cross-border swap activities.

[124] The procedures described in this subsection, which are not all-inclusive, are contemplated for applicants for substituted compliance. The Commission further notes that non-compliance with the comparable home country regulations would constitute a breach of the terms and conditions of the registration with the Commission and potentially would serve as a basis for de-registration of the non-U.S. swap dealer or non-U.S. MSP and/or the commencement of an enforcement action.

[125] After it completes its evaluation, the Commission intends to post a finding of comparability on its Web site.

[126] The Commission may, as it deems appropriate and necessary, conduct an on-site examination of the applicant, as well as consult with the applicant's home regulator. For certain matters, the Commission may request an opinion of counsel.

[127] The Commission notes that under Commission's regulation § 23.603(i), a registered swap dealer or MSP must make all records required to be maintained in accordance with Commission regulation 1.31 promptly upon request to representatives of the Commission. The Commission reserves this right to access records held by registered swap dealers and MSPs, including those that are non-U.S. persons who may comply with the Dodd-Frank recordkeeping requirement through substituted compliance.

[128] In this regard, the Commission has started working with foreign regulators to prepare for such arrangements.

[129] Prior determinations of comparability under part 30.10 of the Commission's regulations will not be determinative for those purposes.

Commission-issued clearing requirement, the Commission notes that it expects to find comparability with foreign regulatory regimes when (i) the swap is subject to a mandate issued by appropriate government authorities in the home country of the counterparties to the swap, provided that the foreign mandate is comparable and comprehensive to the Commission's mandate; and (ii) the swap is cleared through a DCO that is exempted from registration under the CEA.

Request for Comment

Q26. Please provide comments regarding the Commission's substituted compliance proposal, including the appropriate standard and degree of comparability and comprehensiveness that should be applied to make such determination.

Q27. What are some of the factors or elements of a supervisory program that the Commission should consider in making a comparability finding?

Q27a. Should the Commission take a different approach with respect to swap dealers as compared to MSPs?

Q28. How should the Commission address potential inconsistencies or conflicts between U.S. and non-U.S. requirements with respect to the oversight of non-U.S. swap dealers and non-U.S. MSPs?

Q29. Many foreign jurisdictions are in the process of implementing major changes to their oversight of the swaps market. Assuming that a foreign jurisdiction has adopted swaps legislation but has yet to finalize implementing regulations, should the Commission develop an interim process that takes into account the development of ''comparable'' legislation and proposed regulations?

Q30. How should the Commission ensure that prior comparability determinations remain appropriate over time?

V. Cross-Border Application of the CEA's Swap Provisions to Transactions Involving Other (Non-Swap Dealer and MSP) Market Participants

A. Cross-Border Transactions With U.S. Persons [130]

Several of the CEA's swap provisions—namely, those relating to clearing,[131] trade execution,[132] real-time public reporting,[133] Large Trader Reporting,[134] and SDR Reporting,[135] and recordkeeping [136]—also apply to persons or counterparties other than a swap dealer or MSP. As a result, questions arise as to whether, and the extent to which, these requirements apply to transactions outside the United States involving U.S. and non-U.S. persons. In this section, the Commission provides interpretive guidance concerning the application of these Dodd-Frank Act provisions to cross-border transactions in which neither counterparty is a swap dealer or MSP (*i.e.,* all other market participants including ''financial entities,'' as defined in CEA section 2(h)(7)(C)).[137]

The Commission believes that U.S. persons' swap activities outside the United States have a direct and significant connection with activities in, or effect on, U.S. commerce. The swaps market today is global in nature. To manage risks in a global economy, U.S. persons may need to—and often do—transact swaps with both U.S. and non-U.S. persons. Many such swap activities of U.S. persons, particularly those with global operations, may be located outside the United States. In light of the significant extent of U.S. persons' swap activities outside the United States in today's global marketplace, and the risks to U.S. persons and the financial system presented by such swaps activities outside the United States with U.S. persons as counterparties, the Commission believes that U.S. persons' swap activities outside the United States have the requisite connection with or effect on U.S. commerce under section 2(i) to apply the swaps provisions of the CEA to such activities.[138]

Accordingly, with respect to swaps where one (or both) of the counterparties to the swap is a U.S. person, the Commission proposes to interpret section 2(i) in a manner so that the Dodd-Frank Act requirements relating to clearing, trade-execution, real-time public reporting, Large Trader Reporting, and SDR Reporting, and recordkeeping apply to such swaps. Conversely, where a non-U.S. person enters into a swap with another non-U.S. person outside the United States, and where neither counterparty is required to register as a swap dealer or MSP, the Commission would not apply the Dodd-Frank Act requirements to such swaps.[139]

As discussed above, the Commission is concerned that a non-U.S. affiliate or subsidiary could effectively operate as a ''conduit'' for the U.S. person. More specifically, the Commission is concerned that the non-U.S. affiliate or subsidiary of a U.S. person could be used to execute swaps with counterparties in foreign jurisdictions, outside the Dodd-Frank Act regulatory regime. The Commission is considering whether to propose measures to address this situation. However, at this time, the Commission makes clear that such non-U.S. affiliate or subsidiary would not be subject to the Dodd-Frank swap provisions, except pursuant to specific Dodd-Frank Act provisions (or Commission regulation adopted thereunder) or Commission orders.

B. Clearing, Trade Execution, Real-Time Public Reporting, Large Trader Reporting, and SDR Reporting, and Swap Data Recordkeeping

As described in greater detail above, the Dodd-Frank Act's clearing requirement mitigates counterparty risks and, in turn, fosters protection against systemic risk. In a similar vein, the trade execution and real-time public reporting requirements serve to promote both pre- and post-trade transparency which, in turn, enhance price discovery and decrease risk. Together, these requirements serve an important role in protecting U.S. market participants and the general market against financial losses. Accordingly, the Commission interprets section 2(i) to apply the Dodd-Frank Act's clearing, trade

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[130] Appendix C in this release provides a chart describing the application of the specified Dodd-Frank provisions to transactions between counterparties that are neither a swap dealer or MSP.

[131] *See* Section III.B.3.i., *supra.*

[132] *See* Section III.B.3.iii. *supra.*

[133] *See* Section III.B.3.vi. *supra*.

[134] *See* Section III.B.2.vi. *supra.*

[135] *See* Section III.B.2.v. *supra.*

[136] The Commission's part 45 rules require non-swap dealers and non-MSPs to keep ''full, complete and systematic records'' with respect to each swap to which they are a counterparty. *See* 17 CFR 45.2. Such records must include those demonstrating that the parties to a swap are entitled to make use of the clearing exception in CEA section 2(h)(7). Non-swap dealers and non-MSPs must also comply with the Commission's regulations in part 46, which address the reporting of data relating to pre-enactment swaps and data relating to transition swaps.

[137] Nothing in this interpretive guidance should be construed to affect the ability of a foreign board of trade to offer swaps to U.S. persons pursuant to part 48 of the Commission's regulations.

[138] In further support of this interpretation, the Commission notes that the risks to U.S. persons and the U.S. financial system from swap activities of U.S. persons does not depend on the location of such swap activities of U.S. persons. Moreover, the Commission believes that section 2(i) does not require a transaction-by-transaction determination that a particular swap outside the United States has a direct and significant connection with activities in, or effect on, commerce of the United States in order to apply the swaps provisions of the CEA to such transactions; rather, it is the aggregate of such activities and the aggregate connection of such activities with activities in the U.S. or effect on U.S. commerce that warrants application of the CEA swaps provisions to all such activities. *See F. Hoffmann-La Roche, Ltd.,* 542 U.S. at 164 (in response to respondents' argument that the court can take account of comity considerations on a case by case basis, the Court held that such approach is ''too complex to be prove workable.'').

[139] The exception involves Large Trader Reporting, as further discussed below.

execution, and real-time public reporting requirements to any swaps where one of the counterparties is a U.S. person (irrespective of the location of the transaction), without permitting substituted compliance with a foreign regulatory regime.

The Commission's part 20 rules regarding Large Trader Reporting require routine reports from clearing members, in addition to swap dealers and clearing organizations, with reportable positions in specified physical commodity swaps or swaptions. The Commission believes that such data is essential in order for the Commission to carry out its supervisory mandates concerning, among other things, increased transparency, market monitoring, and market abuse prevention. Therefore, the Commission proposes to interpret CEA section 2(i) to require non-U.S. clearing members to report all reportable positions under part 20. The part 20 rules also impose recordkeeping obligations on traders with reportable positions. The Commission proposes to interpret CEA section 2(i) so as to require non-U.S. persons with reportable positions under part 20 to comply with such obligations. Given the significance of these rules to the Commission's oversight of swaps and swaptions that are closely linked to the U.S. futures markets, the Commission would not allow substituted compliance.

With respect to transactions that are subject to the SDR Reporting and swap data recordkeeping requirements, the Commission proposes to interpret section 2(i) so as to permit substituted compliance, provided that the Commission has direct access to the swap data for these transactions that is stored at the foreign trade repository. The Commission has a strong supervisory interest in applying the SDR reporting and recordkeeping requirements to any transactions involving a U.S. counterparty in order to effectively monitor the swap activities of U.S. persons. Nevertheless, the Commission believes that substituted compliance is warranted where it would ease the burden on the counterparties that report their swaps data to a foreign trade repository and the Commission is assured of prompt access to the information critical to its oversight of the swaps market.

The Commission recognizes that applying the Dodd-Frank Act requirements to swaps conducted outside the United States involving a U.S. counterparty may result in two or more jurisdictions asserting authority over these swaps—with the counterparties potentially facing conflicting or duplicative regulatory requirements. The Commission will continue its efforts to address these issues through close coordination and consultation with its regulatory counterparts in other jurisdictions. The Commission also anticipates that cooperative efforts would be reflected in the MOU or similar arrangement (whether bilateral and/or multilateral) discussed above which would provide a framework for regulatory coordination where two or more jurisdictions have authority over a swap.

Request for Comment

Q31. Please provide comments regarding all aspects of the Commission's interpretation of CEA section 2(i) with respect to the proposed application of the Transaction-Level Requirements. The Commission is particularly interested in commenters' views on the impact on U.S. persons as a result of the proposed application of the Dodd-Frank Act's trading requirements.

Q32. What, if any, competitive or economic effects on U.S. commerce, including U.S. persons, should the Commission consider when interpreting CEA section 2(i)? What, if any, competitive or economic effects on non-U.S. persons should the Commission consider when interpreting CEA section 2(i)?

Appendix A—Entity-Level Requirements

The Entity-Level Requirements relate to the management of risks to a swap dealer or MSP as a whole. Accordingly, these requirements apply on a firm-wide basis, inclusive of all swaps and irrespective of whether the counterparty is a U.S. person (or not) or where the transactions are executed.

Capital: CEA section 4s(e) directs the Commission to set capital requirements for swap dealers and MSPs that are not subject to the capital requirements of prudential regulators (*i.e.,* non-bank swap entities). The Commission has proposed rule, § 23.101, which would apply FCM capital requirements if the nonbank swap dealer or MSP is also registered as an FCM, and would apply other capital requirements for those that are not also FCMs. Certain of these non-FCM, nonbank swap entities would be required to meet capital requirements established by the Federal Reserve Board; specifically, SIFIs and nonbank subsidiaries of U.S. bank holding companies.[140]

Chief Compliance Officer: CEA Section 4s(k) requires that each swap dealer and MSP to designate a chief compliance officer (''CCO'') and specify certain duties by the CCO. Pursuant to section 4s(k), the Commission adopted § 3.3, which requires swap dealers and MSPs to designate a CCO responsible for administering the firm's compliance policies and procedures, reporting directly to the board of directors or a senior officer of the swap dealer, as well as preparing and filing (with the Commission) a certified report of compliance with the CEA.

Risk Management: CEA Section 4s(j) requires each swap dealer and MSP to establish internal policies and procedures designed to, among other things, address risk management, monitor compliance with position limits, prevent conflicts of interest, and promote diligent supervision, as well as maintain business continuity and disaster recovery programs. The Commission adopted implementing regulations (§§ 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, and 23.607). The Commission also adopted: (A) § 23.609, which requires certain risk management procedures for swap dealers or MSPs that are clearing members of a DCO; and (B) § 23.608, which prohibits swap dealers providing clearing services to customers from entering into agreements that would: (i) Disclose the identity of a customer's original executing counterparty; (ii) limit the number of counterparties a customer may trade with; (iii) impose counterparty-based position limits; (iv) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (v) prevent compliance with specified time frames for acceptance of trades into clearing.

Swap Data Recordkeeping: CEA section 4s(f)(1)(B) requires swap dealers and MSPs to keep books and records for all activities related to their business. Section 4s(g)(1) requires swap dealers and MSPs to maintain trading records for each swap transaction and all related records, as well as a complete audit trail for comprehensive trade reconstructions. Pursuant to these provisions, the Commission adopted §§ 23.201and 23.203, which require swap dealers and MSPs to keep records including complete transaction and position information for all swap activities, including documentation on which trade information is originally recorded. Swap dealers and MSPs also have to comply with Part 46 of the Commission's regulations, which addresses the recordkeeping requirements for swaps entered into before the date of enactment of the Dodd-Frank Act (''pre-enactment swaps'') and data relating to swaps entered into on or after the date of enactment but prior to the part 45 compliance date (''transition swaps'').

SDR Reporting: CEA section 2(a)(13)(G) requires all swaps, whether cleared or uncleared, to be reported to a registered swap data repository (''SDR''). CEA section 21 requires SDRs to collect and maintain data related to swap transactions as prescribed by the Commission, and to make such data

[140] SIFIs that are not FCMs would be exempt from the Commission's capital requirements, and would comply instead with Federal Reserve Board requirements applicable to SIFIs, while nonbank (and non-FCM) subsidiaries of U.S. bank holding companies would calculate their Commission capital requirement using the same methodology specified in Federal Reserve Board regulations applicable to the bank holding company, as if the subsidiary itself were a bank holding company.

electronically available to regulators. Swap dealers and MSPs would be required to comply with Part 45 of the Commission's regulations, which set forth the specific transaction data that reporting counterparties and registered entities must report to a registered SDR; and Part 46, which addresses the recordkeeping requirements for pre-enactment swaps and data relating to transition swaps.

Physical Commodity Swaps Reporting (Large Trader Reporting): CEA section 4t authorizes the Commission to establish a large trader reporting system for significant price discovery swaps, of which the economically equivalent swaps subject to part 20 reporting are a subset, and in order to implement the statutory mandate in CEA section 4a for the Commission to establish position limits, as appropriate, for physical commodity swaps. The Commission published part 20 rules requiring swap dealers, among other entities, to submit routine position reports on certain physical commodity swaps and swaptions.

ENTITY-LEVEL REQUIREMENTS

U.S.-Based Swap Dealer	Apply.
Foreign Branches/Agencies of U.S.-Based Swap Dealer**	Apply.
Foreign Affiliates of U.S. Person:	
—Swaps Booked in U.S.	Apply.*
Foreign Affiliate of U.S. Person:	
—The Affiliate is the Legal Counterparty But All Swaps Guaranteed by U.S. Person	Substituted Compliance.***
Foreign Affiliate of U.S. Person:	
—Swaps Not Booked in U.S. (*i.e.,* Affiliate is Legal Counterparty); and Swaps Not Guaranteed by U.S. Person.	Substituted Compliance.
Non-U.S.-Based Swap Dealer:	
—Swaps neither Booked in U.S. nor Guaranteed by U.S. Person	Substituted Compliance.

* Where swaps are solicited or negotiated by a foreign affiliate of a U.S. person but directly booked in the U.S. person, the U.S. person must comply with all of the swap dealer duties and obligations related to the swaps, including registration, capital and related prudential requirements.

** Both Entity-Level and Transaction-Level Requirements are the ultimate responsibilities of the U.S.-based swap dealer.

*** With respect to the SDR reporting requirement, the Commission may permit substituted compliance only if direct access to swap data is provided to the Commission.

Appendix B—Transaction-Level Requirements

The Transaction-Level Requirements cover a range of Dodd-Frank requirements: some of the requirements more directly address financial protection of swap dealers (or MSPs) and their counterparties; others address more directly market efficiency and/or price discovery. Further, some of the Transaction-Level Requirements can be classified as Entity-Level Requirements and applied on a firm-wide basis across all swap transactions or activities. Nevertheless, in the interest of comity principles, the Commission believes that the Transaction-Level Requirements may be applied on a transaction-by-transaction basis.

Category A: Risk Mitigation and Transparency

Clearing and Swap Processing: CEA section 2(h)(1) requires a swap to be submitted for clearing to a derivatives clearing organization (''DCO'') if the Commission has determined that the swap is required to be cleared, unless one of the parties to the swap is eligible for an exception under section 2(h)(7) from the clearing requirement and elects not to clear the swap. Finally, the Commission adopted § 23.506, which requires swap dealers and MSPs to submit swaps promptly for clearing and comply with § 23.610, which establishes certain standards for swap processing by swap dealers and MSPs that are clearing members of a DCO.

Margin (and Segregation) Requirement for Uncleared Swap Transactions: Section 4s(e) explicitly requires the adoption of rules establishing margin requirements for swap dealers and MSPs, and applies a bifurcated approach that requires each swap dealer and MSP for which there is a prudential regulator to meet the margin requirements established by the applicable prudential regulator, and each swap dealer and MSP for which there is no prudential regulator to comply with Commission's margin regulations. In contrast, the ''segregation'' requirements in 4s(1) don't use a bifurcated approach—all swap dealers and MSPs are subject to the Commission's rule regarding notice and third party custodians for margin collected for uncleared swaps.

Mandatory Trade Execution: CEA section 2(h)(8) provides that unless a non-financial end-user exemption applies, a swap that is subject to clearing requirement and made available to trade must be traded on a DCM or SEF.

Swap Trading Relationship Documentation: CEA Section 4s(i) requires each swap dealer and MSP to conform to commission standards for the timely and accurate confirmation, processing, netting documentation and valuation of swaps. Pursuant thereto the Commission has proposed § 23.504(a), which would require swap dealers and MSPs to ''establish, maintain and enforce written policies and procedures'' to ensure that the swap dealer or MSP executes written swap trading relationship documentation. Under proposed §§ 23.505(b(1), 23.504 (b)(3), and 23.504(b)(4), the swap trading relationship documentation must include, among other things: all terms governing the trading relationship between the swap dealer and its counterparty; credit support arrangements; investment and rehypothecation terms for assets used as margin for uncleared swaps and custodial arrangements.[141] Further, the swap trading relationship documentation requirement applies to *all* transactions with registered swap dealers and MSPs.

Portfolio Reconciliation and Compression: CEA section 4s(i) directs the Commission to prescribe regulations for the timely and accurate processing and netting of all swaps entered into by swap dealers and MSPs. Pursuant to CEA section 4s(i), the Commission proposed regulations (§§ 23.502 and 23.503), which would require swap dealers and MSPs to perform portfolio reconciliation and compression, respectively, for all swap transactions. Portfolio reconciliation is a post-execution risk management tool to ensure accurate confirmation of a swap's terms and to identify and resolve any discrepancies between counterparties regarding the valuation of the swap. Portfolio compression is a post-trade processing and netting mechanism that is intended to ensure timely accurate processing and netting of swaps. Proposed § 23.503(c) would require all swap dealers and MSPs to participate in bilateral compression exercises and/or multilateral portfolio compression exercises conducted by their SROs or DCOs of which they are members. Further, participation in multilateral portfolio compression exercises is mandatory for dealer to dealer trades.

Real-Time Public Reporting: CEA section 2(a)(13) directs the Commission to promulgate rules providing for the public availability of swap transaction data in real time basis. The Commission promulgated part 43 rules, which provides that all ''publicly reportable swap transactions'' must be reported and publicly disseminated.

Trade Confirmation: CEA section 4s(i) requires that each swap dealer and MSP must comply with the Commission's regulations prescribing timely and accurate confirmation of transactions. The Commission has proposed § 23.501, which requires, among other things, a timely and accurate confirmation of all swaps and life cycle

[141] The requirements under section 4s(i) relating to trade confirmations is a Transaction-Level Requirement. Accordingly, proposed 17 CFR 23.504(b)(2), which requires a swap dealer's and MSP's swap trading relationship documentation to include all confirmations of swap transactions, will apply on a transaction-by-transaction basis.

events for existing swaps. In addition, proposed § 23.504(b)(2) requires a swap dealer's and MSP's swap trading relationship documentation to include all confirmations of swap transactions.

Daily Trading Records: Pursuant to section CEA 4s(g)(1), the Commission adopted § 23.202, which requires swap dealers and MSPs to maintain daily trading records, including records of trade information related to pre-execution, execution, and post-execution data that is needed to conduct a comprehensive and accurate trade reconstruction for each swap. The final rule also requires that records be kept of cash or forward transactions used to hedge, mitigate the risk of, or offset any swap held by the swap dealer or MSP.

Category B: Sales Practices

External Business Conduct Standards: Pursuant to CEA section 4s(h), the Commission has adopted external business conduct rules, which establish business conduct standards governing the conduct of swap dealers and MSPs in dealing with their counterparties in entering into swaps.

CATEGORY A

	U.S. Person	Non-U.S. person guaranteed by U.S. person **	Non-U.S. person not guaranteed by U.S. person
U.S.-Based Swap Dealer	Apply	Apply	Apply.
Foreign Affiliate/Swaps Booked in U.S.*	Apply	Apply	Apply.
Foreign Branches/Agencies of U.S.-Based Swap Dealer	Apply	Substituted Compliance***	Substituted Compliance.***
Foreign Affiliate of U.S. Person: —The Affiliate is the Legal Counterparty But All Swaps Guaranteed by U.S. Person.	Apply	Substituted Compliance	Do Not Apply.
Foreign Affiliate of U.S. Person: —Swaps Not Booked in U.S. (*i.e.,* Affiliate is Legal Counterparty); and Swaps Not Guaranteed by U.S. Person.	Apply	Substituted Compliance	Do Not Apply.
Non-U.S.-Based Swap Dealer: —Swaps neither Booked in U.S. nor Guaranteed by U.S. Person.	Apply	Substituted Compliance	Do Not Apply.

* Where swaps are solicited or negotiated by a foreign affiliate but directly booked in the U.S. person, the U.S. person must comply with all of the swap dealer duties and obligations, including all Transaction-Level Requirements. The foreign affiliate, if separately required to register as a swap dealer, must comply with those requirements applicable to its swap dealing activities.

** The Transaction-Level Requirements apply to swaps in which: (i) a non-U.S. counterparty is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. counterparty regularly enters into swaps with one or more U.S. affiliates or subsidiaries of the U.S. person; and (iii) the financials of such non-U.S. counterparty are included in the consolidated financial statements of the U.S. person.

*** Under limited circumstances, where there is not a comparable foreign regulatory regime, foreign branches and agencies of U.S. swap dealers may comply with the local transaction-level requirements rather than the Transaction-Level Requirements, subject to specified conditions.

Notes:

1. The swap trading relationship documentation requirement applies to all transactions with registered swap dealers and MSPs.
2. Participation in multilateral portfolio compression exercises is mandatory for dealer to dealer trades.

CATEGORY B

	U.S. person	Non-U.S. person guaranteed by U.S. person **	Non-U.S. person not guaranteed by U.S. person
U.S.-Based Swap Dealer	Apply	Apply	Apply.
Foreign Affiliate of U.S. Person: —Swaps are Booked in U.S.*	Apply	Do Not Apply	Do Not Apply.
Foreign Branches/Agencies of U.S.-Based Swap Dealer	Apply	Do Not Apply	Do Not Apply.
Foreign Affiliate of U.S. Person: —The Affiliate is the Legal Counterparty But All Swaps Guaranteed by U.S. Person	Apply	Do Not Apply	Do Not Apply.
Foreign Affiliate of U.S. Person: —Swaps Not Booked in U.S. (i.e., Affiliate is Legal Counterparty); and Swaps Not Guaranteed by U.S. Person.	Apply	Do Not Apply	Do Not Apply.
Non-U.S.-Based Swap Dealer: —Swaps neither Booked in U.S. nor Guaranteed by U.S. Person	Apply	Do Not Apply	Do Not Apply.

* Where swaps are solicited or negotiated by an affiliate of a U.S. person but directly booked in the U.S. person, the U.S. person must comply with all of the swap dealer duties and obligations, including all Transaction-Level Requirements. The foreign affiliate, if separately required to register as a swap dealer, must comply with those requirements applicable to its swap dealing activities.

** The Transaction-Level Requirements apply to swaps in which: (i) A non-U.S. counterparty is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. counterparty regularly enters into swaps with one or more U.S. affiliates or subsidiaries of the U.S. person; and (iii) the financials of such non-U.S. counterparty are included in the consolidated financial statements of the U.S. person.

Appendix C—All Other (Non-Swap Dealer/MSP) Market ParticipantS *

	U.S. person	Non-U.S. person guaranteed by U.S. person	Non-U.S. person not guaranteed by U.S. person
U.S. Person	Apply	Apply	Apply.
Non-U.S. Person *Guaranteed* by U.S. Person	Apply	Do Not Apply	Do Not Apply.

	U.S. person	Non-U.S. person guaranteed by U.S. person	Non-U.S. person not guaranteed by U.S. person
Non-U.S. Person Not Guaranteed by U.S. Person	Apply	Do Not Apply	Do Not Apply.

*The relevant Dodd-Frank requirements are those relating to: clearing, trade execution, real-time public reporting, Large Trader Reporting, SDR reporting and swap data recordkeeping.

Issued in Washington, DC, on June 29, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed guidance on the cross-border application of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act). The Commission is not required to solicit public comment on interpretive guidance, but we are particularly interested in the public's input and look forward to comments on the proposed guidance.

In 2008, swaps, and in particular credit default swaps, concentrated risk in financial institutions and contributed to the financial crisis, the worst economic crisis Americans have experienced since the Great Depression. Eight million Americans lost their jobs, millions of families lost their homes, and small businesses across the country folded. Congress and the President responded with the Dodd-Frank Act, bringing common-sense rules of the road to the swaps marketplace.

Section 722(d) of the Dodd-Frank Act states that swaps reforms shall not apply to activities outside the United States unless those activities have ''a direct and significant connection with activities in, or effect on, commerce of the United States.'' In interpreting Section 722(d), we must not forget the lessons of the 2008 crisis and earlier. Swaps executed offshore by U.S. financial institutions can send risk straight back to our shores. It was true with the London and Cayman Islands affiliates of AIG, Lehman Brothers, Citigroup and Bear Stearns. A decade earlier, it was true, as well, with Long-Term Capital Management.

The nature of modern finance is that large financial institutions set up hundreds, if not thousands of ''legal entities'' around the globe.

They do so in an effort to respond to customer needs, funding opportunities, risk management and compliance with local laws. They do so as well, though, to lower their taxes, manage their reported accounting, and to minimize regulatory, capital and other requirements, so-called ''regulatory arbitrage.'' Many of these far-flung legal entities, however, are still highly connected back to their U.S. affiliates.

During a default or crisis, the risk that builds up offshore inevitably comes crashing back onto U.S. shores. When an affiliate of a large, international financial group has problems, the markets accept this will infect the rest of the group. This was true with AIG. Its subsidiary, AIG Financial Products, brought down the company and nearly toppled the U.S. economy. It was run out of London as a branch of a French-registered bank, though technically was organized in the United States.

Lehman Brothers was another example. Among its complex web of affiliates was Lehman Brothers International (Europe) in London. When Lehman failed, the London affiliate had more than 130,000 outstanding swaps contracts, many of them guaranteed by Lehman Brothers Holdings back in the United States.

Yet another example was Citigroup, which set up numerous structured investment vehicles (SIVs) to move positions off its balance sheet for accounting purposes, as well as to lower its regulatory capital requirements. Yet, Citigroup had guaranteed the funding of these SIVs through a mechanism called a liquidity put. When the SIVs were about to fail, Citigroup in the United States assumed the huge debt, and taxpayers later bore the brunt with two multi-billion dollar infusions. The SIVs were launched out of London and incorporated in the Cayman Islands.

Bear Stearns is another case. Bear Stearns' two sinking hedge funds it bailed out in 2007 were incorporated in the Cayman Islands. Yet again, the public assumed part of the burden when Bear Stearns itself collapsed nine months later.

A decade earlier, the same was true for Long-Term Capital Management. When the hedge fund failed in 1998, its swaps book totaled in excess of $1.2 trillion notional. The vast majority were booked in its affiliated partnership in the Cayman Islands.

The recent events of JPMorgan Chase, where it executed swaps through its London branch, are a stark reminder of this reality of modern finance.

The proposed guidance interpreting Section 722(d),intended to be flexible in application, includes the following key elements:

First, it provides the guidance that when a foreign entity transacts in more than a de minimis level of U.S. facing swap dealing activity, the entity would register under the Dodd-Frank Act swap dealer registration requirements.

Second, it includes a tiered approach for foreign swap dealer requirements. Some requirements would be considered entity-level, such as for capital, chief compliance officer, swap data recordkeeping, reporting to swap data repositories and large trader reporting. Some requirements would be considered transaction-level, such as clearing, margin, real-time public reporting, trade execution, trading documentation and sales practices.

Third, entity-level requirements would apply to all registered swap dealers, but in certain circumstances, foreign swap dealers could meet these requirements by complying with comparable and comprehensive foreign regulatory requirements, or what we call ''substituted compliance.''

Fourth, transaction-level requirements would apply to all U.S. facing transactions. For these requirements, U.S. facing transactions would include not only transactions with persons or entities operating or incorporated in the United States, but also transactions with their overseas branches. Likewise, this would include transactions with foreign affiliates that are guaranteed by a U.S. entity, as well as the foreign affiliates operating as conduits for a U.S. entity's swap activity. Foreign swap dealers, as well as overseas branches of U.S. swap dealers, in certain circumstances, may rely on substituted compliance when transacting with foreign affiliates guaranteed by or operating as conduits of U.S. entities.

Fifth, for certain transactions between a foreign swap dealer (including an overseas affiliate of a U.S. person) and counterparties not guaranteed by or operating as conduits for U.S. entities, Dodd-Frank transaction-level requirements may not apply. For example, this would be the case for a transaction between a foreign swap dealer and a foreign insurance company not guaranteed by a U.S. person. There are some in the financial community who might want the CFTC to ignore the hard lessons of the crisis and before.

They might comment that swap trades entered into in London branches of U.S. entities do not have a direct and significant connection with activities in, or effect on U.S. commerce.

They might comment that affiliates guaranteed by a U.S. mother ship do not have a direct and significant connection with activities in, or effect on U.S. commerce.

They might comment that affiliates acting as conduits for swaps activity back here in

the United States do not have a direct and significant connection with activities in, or effect on U.S. commerce.

If we were to follow these comments, though, American jobs and markets might move offshore, yet the risk associated with such overseas swaps activities, particularly in times of crisis, would still have a direct and significant connection with activities in, or effect on U.S. commerce.

Appendix 3—Statement of Commissioner Jill Sommers

Over a year ago, the Commission finally acknowledged that we needed to address the growing uncertainty brewing among swap market participants who were trying to decipher the extraterritorial reach of the Dodd-Frank Act. We held a two-day roundtable last August and have received numerous comments since then from market participants and other regulators asking us to consider a global approach to the regulation of these global markets. We were encouraged to coordinate with our foreign and domestic partners and urged not to implement our regulatory approach in a silo.

CFTC staff has worked diligently to address the challenging issues associated with the statutory language of Section 2(i) of the Commodity Exchange Act (CEA). Unfortunately, when the Proposed Interpretive Guidance and Policy Statement (''Interpretive Guidance'') was finally shared with the rest of the Commission on June 1, 2012, we learned that staff had been guided by what could only be called the ''Intergalactic Commerce Clause'' of the United States Constitution, in that every single swap a U.S. person enters into, no matter what the swap or where it was transacted, was stated to have a direct and significant connection with activities in, or effect on, commerce of the United States. This statutory and constitutional analysis of the extraterritorial application of U.S. law was, in my view, nothing short of extra-statutory and extra-constitutional.

While the many revisions over the last several weeks have tempered the outer limits of our initial approach, the Interpretive Guidance nonetheless continues to ignore the Commission's successful history of mutual recognition of foreign regulatory regimes spanning 20-plus years. We have worked for decades to establish relationships with our foreign counterparts built on respect and trust, and should not be so eager and willing to disregard their capabilities. All G20 nations agreed to comprehensive regulation of swap markets and we should rely on their regional expertise. The current document acknowledges the concept of ''substituted compliance,'' but it is extremely vague with respect to what the Commission will be considering in making these determinations. In my view, a very broad and high level review of regulatory regimes is appropriate versus a word-for-word comparison of rule books.

While the market failures described in the ''Background'' section of the Interpretive Guidance recount why the G20 nations together agreed to a common set of principles for regulation of a global marketplace, recounting those market failures does not justify the expansive view the Commission has taken of its jurisdictional reach, and does not justify the implication that other nations are not capable of effective regulation.

As Commissioner O'Malia points out in his concurrence, not only have we failed to coordinate with foreign regulators on a global cross-border approach, we have failed to coordinate with our fellow domestic regulators. As I have said for many months, we should be proposing a rule defining the cross-border application of Dodd-Frank that is harmonized with the SEC's approach, both in substance and in timing. Unfortunately we are not doing that. Instead, we are proposing Interpretive Guidance that ultimately has the effect of a rule. No matter what it is called, the Interpretive Guidance is so inextricably linked to the entity definitions and the registration rules that it is a part of those rules themselves. Because it is not titled a ''Notice of Proposed Rulemaking,'' we skirt the requirements of the Administrative Procedure Act and the requirement under Section 15(a) of the CEA that the Commission conduct a cost-benefit analysis. I believe this approach, yet again, needlessly exposes the Commission to litigation.

Over the last two years, while considering many proposed and final rules, I have been very clear that I cannot support an approach that creates an un-level playing field for market participants. I am concerned that the different compliance dates in the Proposed Exemptive Order may unnecessarily disadvantage U.S.-based swap dealers and MSPs from the moment the document is published in the **Federal Register**. I encourage comment on this issue and hope that if we determine to harmonize the compliance dates for entities in the U.S. and abroad, that we can do so before too much damage is done to U.S.-based market participants.

As I reviewed the documents currently under consideration, it occurred to me that two choices are presented. One is that the Commission decline to issue the Interpretive Guidance and Proposed Exemptive Order and leave market participants in a continued state of uncertainty. The other is that the Commission issue these documents and provide market participants with the certainty that we are advancing a flawed policy. Neither is appealing.

My decision to support putting these proposals out for comment was not easily reached. From the beginning I have supported a much simpler approach to the extraterritorial reach of Dodd-Frank. I am hopeful that the comment letters will encourage the Commission to adopt a final rule that will rely on mutual recognition of all global regulatory regimes in a manner that avoids costly, burdensome duplicative regulations.

Appendix 4—Statement of Commissioner Scott D. O'Malia

I respectfully concur with the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') approval of its proposed interpretive guidance and policy statement (''Proposed Guidance'') regarding section 2(i) of the Commodity Exchange Act (''CEA'')[142] and its notice of proposed exemptive order (''Proposed Order''). While I have strong reservations about the statutory authority and disagree with the Commission's decision to issue interpretive guidance instead of a formal rulemaking, I believe that the timely release of these proposals is critical for firms to have some sense of what U.S. standards will apply to their cross-border transaction, and how those standards will comport with international standards. We expect that these proposals will improve as a result of input from market participants, as well as an open dialogue with global regulators.

These two proposals are complementary in that the Commission's long-awaited Proposed Guidance establishes our view of the application of the swaps provisions of the CEA to cross-border swaps transactions, while the Proposed Order will delay compliance with certain entity-level and transaction-level swaps requirements in the CEA pending the final adoption of the Proposed Guidance. The Proposed Order also borrows definitions and concepts from the Proposed Guidance, such as the proposed definition of ''U.S. person.'' While I believe that the Commission's issuance of the Proposed Guidance and the Proposed Order are overdue, I have a number of general concerns with the former.

I have been assured that the Proposed Guidance is a draft and, although it is not required, will follow the normal notice-and-comment process under the Administrative Procedure Act.[143] After the comment period, the Commission will review public comments and subsequently will incorporate those comments into final guidance. I would like to make it clear that if I were asked to vote on the Proposed Guidance as final, my vote would be no.

The Proposed Guidance

My concerns with the Proposed Guidance relate generally to the Commission's unsound interpretation of section 2(i) of the CEA. In particular, I believe that the Commission's analysis: (i) Misconstrues the language of section 2(i); (ii) is inconsistently applied to different activities; (iii) loosely considers international law and comity; (iv) lacks meaningful collaboration with foreign and domestic regulators; and (v) blurs the lines between interpretive guidance and legislative or interpretive rulemaking. I discuss each of these concerns below.

i. Statutory Misconstruction

Section 2(i) of the CEA provides, in part, that the Commission's swap authority does not apply to foreign activities unless those activities ''have a direct and significant connection with activities in, or effect on, commerce of the United States * * *.''[144] When Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[145] it intended that

[142] *See* 7 U.S.C. 1 *et seq.*

[143] *See* 5 U.S.C. 551 *et seq.*

[144] 7 U.S.C. 2(i) (2012).

[145] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

section 2(i) act as a limitation on the Commission's authority. Under section 2(i), the Commission is required to demonstrate how and when its jurisdiction applies to activities that take place outside of the United States. Instead, the Commission's Proposed Guidance ignores the literal statutory construction of section 2(i) and prejudicially switches the analysis. In other words, the Proposed Guidance now places the burden on market participants to explain why their foreign swaps activities are outside of the Commission's regulatory oversight. By placing the burden on market participants to determine whether their swaps activities are subject to the swaps provisions of the CEA—and without providing more guidance to these participants—the Commission inappropriately broadens the scope of swaps activities that will fall within the Commission's jurisdiction. The Commission could more clearly delineate which activities it believes will have a direct and significant connection with U.S. commerce in order to ensure that our regulatory interests are preserved.[146]

ii. Inconsistent Application of CEA Section 2(i)

In addition, the Commission's Proposed Guidance inconsistently applies, and sometimes ignores, its own section 2(i) analysis. For instance, the Commission sets forth in detail its belief that ''the level of swap dealing that is substantial enough to require a person to register as a swap dealer when conducted by a U.S. person, also constitutes a 'direct and significant connection' within the meaning of section 2(i)(1) of the CEA.'' [147] As a result, a non-U.S. person would have a direct and significant connection with the United States and therefore have to register with the Commission as a swap dealer only once it engages in more than the de minimis level of swap dealing with U.S. persons.[148] In contrast to this somewhat extensive analysis for swap dealers, the Commission provides a sparse explanation of why it believes each and every swap transaction between one or more U.S. persons or counterparties other than a swap dealer or major swap participant (''MSP'') satisfies the direct and significant connection analysis in section 2(i).[149] Swap transactions that fall under this analysis would be subject to certain transaction-level swaps requirements, including clearing, exchange trading, reporting to a swap data repository under part 45 of the Commission's regulations, real-time public reporting and large swaps trader reporting under part 20 of the Commission's regulations.

Similarly, in another instance, the Commission has divined an exception to the application of certain Commission regulations for situations where a foreign branch of a U.S. swap dealer engages in swap dealing activities in emerging markets or other jurisdictions without comparable swaps regimes.[150] Although the policy result of this exception is well intended, its bare analysis pales in comparison to the Commission's section 2(i) analysis in other places of the Proposed Guidance.[151]

In yet another section of the Proposed Guidance, the Commission does not adequately explain why almost all transaction-level requirements (*i.e.,* clearing, margining for uncleared swaps, real-time public reporting and certain business conduct standards) equally satisfy the direct and significant connection analysis under CEA section 2(i). In my view, two transaction-level requirements related to pre- and post-trade transparency—namely, trade execution and real-time public reporting requirements—do not raise the same level of systemic risk concerns as clearing and margining for uncleared swaps. I believe the Commission should better explain its rationale for requiring foreign swap dealers transacting with non-U.S. persons to meet the trade execution and real-time public reporting requirements under Title VII of the Dodd-Frank Act and Commission regulations.

iii. Loose Consideration of Principles of International Comity

Moreover, the Commission's interpretation of CEA section 2(i) is overly broad to the point where the extent of the Commission's jurisdiction is virtually endless. The Proposed Guidance takes the position that all transactions involving a U.S. person fall within the Commission's jurisdiction, regardless of the location of the transaction or the regulations in effect within the relevant jurisdiction.

While section 2(i) gives the Commission jurisdiction to reach activities that take place outside of the United States, the Commission's Proposed Guidance loosely considers principles of international comity that are essential for determining the extraterritorial applicability of U.S. law. Although the Proposed Guidance expressly states that the Commission will exercise its regulatory authority over cross-border activities in a manner consistent with principles of international comity, the Commission's proposed approach could be described as unilateral and dismissive of foreign law, even when those laws may achieve the same results sought by the Commission.[152]

I strongly believe that the Commission instead must honor these principles in order to respect the legitimate interests of other sovereign nations. This approach would serve to complement, and not limit, the ability of the Commission to effectively regulate swaps markets. The Commission does not have the resources to register and regulate all market participants and swaps activities. By relying on comparable foreign regulatory regimes to address the trading activities of foreign market participants, the Commission could better allocate resources domestically in a more effective manner.

iv. The Commission Should Engage in Real and Meaningful Cooperation With Foreign and Domestic Regulators

The Proposed Guidance references a series of well-known large financial institution failures—such as Lehman Brothers and Long Term Capital Management—to support the Commission's over-expansive interpretation and application of Title VII of the Dodd-Frank Act. I agree that those failures had a detrimental effect on the U.S. economy. We must not forget, however, that the swaps

[146] For example, in the case of non-interdealer swap transactions, the Commission could focus its analysis on the solicitation activities of swap dealers. In the case of other swap transactions, the Commission could examine the location of where performance of the primary obligations under a swap agreement takes place.

[147] The Commission's analysis in the Proposed Guidance relies on its analysis in the final entities rule. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[148] *See* 77 FR at 30634 (''[T]he Commissions believe that the appropriate threshold for the phase-in period is an annual gross notional level of swap dealing activity of $8 billion or less. In particular, the $8 billion level should still lead to the regulation of persons responsible for the vast majority of dealing activity within the swap markets.''). The Commission ties the direct and significant connection analysis to the crude analysis in the final entities rule. I voted against the final entities rule for several reasons, including its flawed reasoning. I expressed my support, however, with respect to the positive outcome that resulted from the establishment of the $8 billion de minimis threshold.

[149] *See* section V of this Proposed Guidance (''In light of the significant extent of U.S. persons' swap activities outside of the United States in today's global marketplace, and the risks to U.S. persons and the financial system presented by such swaps activities outside of the United States with U.S. persons as counterparties, the Commission believes that U.S. persons' swap activities outside the United States have the requisite connection with or effect on U.S. commerce under section 2(i) to apply the swaps provisions of the CEA to such activities.''). In a footnote in the Proposed Guidance, the Commission then reasons without persuasive legal support that the aggregate of outside activities and the aggregate connection with U.S. commerce warrant the application of the CEA swaps provisions to all such foreign activities.

The Commission's analysis ignores and minimizes two important points. First, it ignores the fact that multinational entities also may have major operations and business relationships in foreign jurisdictions and may be considered persons within those jurisdictions. Second, its analysis minimizes the fact that there are an appreciable number of U.S. persons who engage in a relatively small number of swaps transactions. Even if those U.S. persons' transactions were aggregated, it is questionable whether their swaps in the aggregate would meet the ''significant'' element in the section 2(i) analysis.

[150] *See* section III.D.1 of this Proposed Guidance (''To be eligible for this exception, the aggregate notional value (expressed in U.S. dollars and measured on a quarterly basis) of the swaps of all foreign branches in such countries may not exceed five percent of the aggregate notional value (expressed in U.S. dollars and measure on a quarterly basis) of all of the swaps of the U.S. swap dealer.'').

[151] *See, e.g.,* the MSP discussion in section II.C.2. of this Proposed Guidance.

[152] The Proposed Guidance correctly cites judicial and executive branch precedent and guidance addressing the application of international law and comity concepts in determining the extraterritorial applicability of federal statutes. *See* section III.A. of this Proposed Guidance. These concepts are found in sections 403(1) and (2) of the Third Restatement of Foreign Relations Law. *See* Restatement (Third) of Foreign Relations Law of the United States §§ 403(1), 403(2) (1986).

markets are truly global and the Commission's swaps regulations will not operate in a vacuum. For that reason, the Commission should consider the interaction of its swaps regulations with the regulations of other jurisdictions, all of which have legitimate regulatory interests in the trading of swaps by multinational organizations. Thus, the Commission's swaps regulation should be concordant with foreign swaps regulations in order to avoid duplication, conflict and unnecessary uncertainty.

In light of today's highly interdependent, global financial markets, the Commission needs to engage in real cooperation with foreign regulators and to coordinate its swaps regulations with the regulations of other sovereign nations. Concepts of comparability and mutual recognition are essential.

The Commission should follow the example of international cooperation and coordination seen in the efforts of the Basel Commission on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO'') in developing harmonized international standards for the margining of uncleared swaps. BCBS and IOSCO plans to publish a consultation paper outlining these standards. Notwithstanding the Commission's own efforts to propose rules for the margining of uncleared swaps for swap dealers and MSPs,[153] the Commission plans to consider the final policy recommendations set forth by BCBS and IOSCO when adopting the Commission's final rules for the margining of uncleared swaps and may adapt those final rules to conform with BCBS and IOSCO's final policy recommendations. The Commission should follow the lead of BCBS and IOSCO in harmonizing many of its other rules. In my view, either the G20 or another international body or consortium of nations could act as a springboard for the coordination of swaps regulation.[154]

On June 22, 2012, European Union Commissioner Michel Barnier echoed this position in a statement to the *Financial Times*.[155] Mr. Barnier made clear that effective international regulation involves regulators coordinating their efforts to implement mandatory clearing, trading and reporting of over-the-counter derivatives. A coordinated approach would ensure that swaps do not evade regulation. Mr. Barnier also made clear that regulatory regimes that assert jurisdiction over trading activity already within the jurisdiction of another competent regulator is both unnecessary and costly. I agree with Mr. Barnier's view that our goal as regulators should be to establish regulatory regimes that prevent swaps from slipping through the cracks without applying our laws to activity that is better regulated by our trusted colleagues abroad.

Unfortunately, the Proposed Guidance overreaches in many respects and, as a result, steps on the toes of other sovereign nations. Today's Proposed Guidance will likely provoke these nations to develop strict swaps rules in retaliation that unfairly and unnecessarily burden U.S. firms.[156]

Interestingly, we not only fail to harmonize internationally, we also fail to harmonize domestically. In other words, I believe that the Commission should take a page from the Securities and Exchange Commission's (''SEC'') playbook regarding implementation and the application of swaps requirements to cross-border activities. Recently, the SEC issued a statement of general policy (the ''SEC's Statement'') on the sequencing of compliance dates for final rules applicable to the security-based swaps market.[157] The SEC's Statement presents a commonsense sequencing of the compliance dates for the SEC's final rules implementing the provisions of Title VII of the Dodd-Frank Act to domestic and cross-border swaps activities.

In stark contrast, the Commission is engaging in what amounts to high-frequency regulation. I am very critical of this regulatory approach because it generally results in regulatory uncertainty and unintended, adverse consequences. In my view, failure to achieve real and meaningful harmonization of the implementation and application of swaps and security-based swaps rules will result in inconsistencies and added compliance challenges and costs for market participants who trade in both markets.

v. Interpretive Guidance or an Interpretive Rule?

Several times while reading drafts of the Proposed Guidance, I had to stop, put it down, and recall that I was reading the Commission's proposed interpretation of CEA section 2(i)—not a prescriptive rule. Although the Commission has taken great pains to clarify that it is publishing guidance and a policy statement regarding the cross-border application of the swaps provisions of the CEA, certain elements of the Proposed Guidance are written similar to legislative or interpretive rules instead of interpretive guidance. For example, the Proposed Guidance states that subsequent to registration with the Commission:

[T]he Commission expects that a non-U.S. swap dealer or non-U.S. MSP would notify the Commission of any material changes to information submitted in support of a comparability finding (including, but not limited to, changes in the relevant supervisory or regulatory regime) as the Commission's comparability determination may no longer be valid.[158]

The Commission's artful use of the terms ''expect'' and ''expectation'' in the Proposed Guidance does not disguise the fact that it is requiring applicants to satisfy significant ongoing monitoring and compliance obligations in order to maintain its comparability finding. If the Commission wanted to require a non-U.S. swap dealer or non-U.S. MSP applicant to submit these additional documents in connection with such applicant's ongoing registration-related obligations, the Commission should have included these requirements in the swap dealer and MSP registration rulemaking, which the Commission finalized in January of this year.[159] Instead, the Commission is issuing today's Proposed Guidance in a manner that is outside of the requirements set forth in the Administrative Procedure Act.[160]

The Proposed Order

Notwithstanding my general concerns with the Proposed Guidance, I believe that the Commission's Proposed Order appropriately provides both U.S. and foreign firms with transition periods in which to comply with the Commission's interpretation of CEA section 2(i). As noted above, the Proposed Order would permit foreign swap dealer and MSP registrants to delay compliance with certain entity-level requirements and transaction-level requirements under Title VII of the Dodd-Frank Act pending the adoption of the Commission's final

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[153] *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. 27802 (May 12, 2011).

[154] On June 18–19, 2012, the leaders of the G20 convened in Los Cabos, Mexico to reaffirm their commitments with respect to the regulation of the over-the-counter (''OTC'') derivatives markets. Specifically, the G20 leaders reaffirmed their commitment that all standardized OTC derivatives be traded on exchanges or electronic platforms and be centrally cleared by the end 2012. *See* the G20 Declaration (June 2012), para. 39, p. 7, at: *http://www.g20.org/images/stories/docs/g20/conclu/G20_Leaders_Declaration_2012.pdf.*

The Commission should follow the spirit of the G20's cooperative efforts by working with foreign regulators to determine the applicability of its swaps regulations to cross-border swaps.

[155] See statement by Commissioner Michel Barnier of the European Union, Financial Times, June 22, 2012 (''Where the rules of another country are comparable and consistent with the objectives of U.S. law, it is reasonable to expect U.S. authorities to rely on those rules and recognize activities regulated under them as compliant. We in the EU can do exactly the same * * * This is reasonable because it accepts legal boundaries and the need for regulators to trust and rely on each other. It is effective because it achieves our common objective of mandatory clearing, trading and reporting of OTC derivatives: no trade will escape the regulation. It is efficient because it avoids subjecting the same trades and businesses to two different sets of rules simultaneously and expensively.'').

[156] Some jurisdictions have provisions that are similar to CEA section 2(i). For example, Article 13 of European Market Infrastructure Regulation (''EMIR'') provides that the European Securities and Markets Authority must prescribe technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect on the European Union, or in cases where it is necessary or appropriate to prevent the evasion of any general applicability provisions in EMIR. *See* Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, European Market Infrastructure Regulation (Mar. 29. 2012), available at: *http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm.* The Commission's overreaching interpretation of CEA section 2(i) may inspire ESMA and other regulators to interpret their provisions in a similar manner.

[157] *See* Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, to be published under 17 CFR Part 240 (June 11, 2012), available at: *http://www.sec.gov/rules/policy/2012/34-67177.pdf.*

[158] Section IV.A.2 of this Proposed Guidance.

[159] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[160] *See* 5 U.S.C. 551 *et seq.*

interpretive guidance regarding section 2(i). My concurrence today comes after several days of negotiations with my fellow commissioners. I am relieved that we are protecting the competitiveness of U.S. firms in the Proposed Order.[161] Although I am generally supportive of the Proposed Order, I do have a couple of more pragmatic concerns regarding the manner in which foreign swap dealers and MSPs will comply with the Commission's registration requirements.

First, I believe the Commission should tie the expiration of this relief to the adoption of a final exemptive order. Currently, the Proposed Order unjustifiably ties the expiration of the relief to the date on which the Proposed Order is published in the **Federal Register**. The Proposed Order's current expiration does not make sense in light of the fact that potential registrants will not know the contours of the final relief until the Commission approves a final exemptive order. If we do not tie the expiration of relief to the publication of the final exemptive order, are we truly providing adequate notice and a period of time in which registrants can comply?

Second, the Proposed Order should at least include questions regarding how the Commission proposes to address practical considerations regarding the registration of foreign swap dealers and MSPs. The Commission should set out its preliminary thinking regarding how these foreign swap dealers and MSPs will register their associated persons and principals, in addition to addressing concerns regarding the transfer of, and withdrawal from, Commission registration.

I have included a few questions at the end of my statement to address these practical concerns.

[161] Under the Proposed Order, U.S. swap dealers and MSPs will only be required to register with the Commission and to meet the requirements under parts 20 (large swap trader reporting) and 45 (swap data recordkeeping and reporting) until December 31, 2012 before other entity-level requirements will become effective.

Do Not Ignore the Significant Cost Implications

I would like to make one closing but important point regarding the potential costs of today's Proposed Guidance. While I understand that the CEA only requires the Commission to consider the costs and benefits of its regulations and orders—not interpretive guidance—the Proposed Guidance, once finalized will result in significant costs to the swaps industry. The implications of the Commission's adoption of interpretive guidance on cross-border swaps activities will be nothing at which to laugh. Firms will incur significant operational, legal and administrative expenses in connection with the registration and ongoing compliance with the Commission's swaps regulations. Not to mention, many firms that operate through branches may feel compelled to convert into, and separately capitalize, affiliates in order to limit the impact of the Commission's interpretation.

Accordingly, I encourage the Commission to prepare a report separate from its adoption of the Proposed Guidance, which analyzes the costs attributable to the breadth of the Commission's new authority under CEA section 2(i). This report will help inform market participants who seek guidance as to the potential costs of trading swaps in the United States. More importantly, the report will help inform the Commission in connection with the issuance of future rulemakings under Title VII of the Dodd-Frank Act.

Conclusion

I am relieved that the Commission is finally issuing today's proposals. Commission staff has spent well over one year preparing the proposals before us today. The publication of the Commission's interpretation of CEA section 2(i) is crucial. I hope that the release of these proposals will enable market participants to determine how the international rules and expansive international oversight of the Dodd-Frank Act might impact their activities in the United States and internationally. I want to ensure that U.S. firms are placed on a fair and competitive playing field that offers no opportunity for regulatory arbitrage. I am mindful that a seamless regulatory net can only be achieved through international cooperation and coordination.

In summary, I believe the Commission's final interpretive guidance should reflect: (1) Principles of international law and comity; (2) a clear understanding of the implications of the Proposed Guidance so that the Commission can make an informed decision regarding the various policy alternatives; and (3) parity to ensure that U.S. firms are not unfairly disadvantaged vis-à-vis their foreign competitors. I fear that if we adopt the Proposed Guidance as final, the Commission will take an imperialistic view of the swaps market. I also remain concerned regarding the Commission's shaky legal analysis.

I look forward to reviewing the myriad of comments submitted in response to today's proposals. I implore market participants, as well as domestic and foreign regulators, to share their views and let us know how to harmonize our efforts so that we collectively can develop an internationally consistent and complementary approach to address the cross-border regulation of the swaps markets.

Questions

1. Please share your views regarding the Commission's proposed effective date for the relief set forth in the Proposed Order. Should the expiration of the effective date be extended or shortened?

2. Should the Commission permit swap dealer and MSP registrants to conditionally de-register following the expiration of the effective date of the Proposed Order? If so, under what conditions should the Commission allow de-registration?

3. Should the Commission permit swap dealer and MSP registrants to transfer their registration to a majority-owned affiliate or subsidiary? If so, under what circumstances should the Commission allow such a transfer?

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