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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2009–0100]

RIN 0579–AD35

Irradiation Treatment; Location of Facilities in the Southern United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the phytosanitary treatment regulations to provide generic criteria for new irradiation treatment facilities in the Southern States of the United States. This action will allow irradiation facilities to be located anywhere in these States, subject to approval, rather than only in the currently approved locations. We are also amending the regulations to allow for the irradiation treatment of certain imported fruit from India and Thailand upon arrival in the United States. This action will facilitate the importation of fruit requiring irradiation treatment while continuing to provide protection against the introduction of pests of concern into the United States.

DATES: *Effective Date:* August 20, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatment regulations contained in 7 CFR part 305 (referred to below as the regulations) set out the general requirements for performing treatments and certifying or approving treatment facilities for fruits, vegetables, and other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) administers these regulations.

The regulations in § 305.9 set out irradiation treatment requirements for imported regulated articles; regulated articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands; and regulated articles moved interstate from areas quarantined for certain pests of concern. In § 305.9, paragraph (a)(1) allows irradiation treatment facilities to be located in any State of the United States, except for the Southern States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The regulations do allow irradiation facilities to be located at the maritime ports of Gulfport, MS, and Wilmington, NC, and the airport of Atlanta, GA.

The regulations in § 305.9 also allow for irradiation treatment of articles either prior to or after arrival in the United States, provided an APHIS-approved facility is available. The regulations in parts 318 and 319 allow the importation of certain fruits from India (mangoes), Mexico (guavas), Pakistan (mangoes), Thailand (litchis, longans, mangoes, mangosteens, pineapples, and rambutans), and Vietnam (dragon fruits), and the interstate movement of several fruits and vegetables from Hawaii, after they have received irradiation treatment. While the regulations in parts 318 and 319 provide that fruits and vegetables moving from Mexico, Pakistan, Vietnam, and Hawaii may receive irradiation at either the point of origin or upon arrival in the mainland United States, the regulations in part 319 require fruit from India and Thailand to be treated prior to arrival in the United States.

On September 29, 2011, we published in the **Federal Register** a proposal [1] (76 FR 60390–60395, Docket No. APHIS–2009–0100) to amend § 305.9 by establishing generic phytosanitary criteria to replace the current criteria for irradiation facilities at the maritime ports of Gulfport, MS, and Wilmington, NC, and the airport of Atlanta, GA, and to apply the proposed generic criteria to any new irradiation treatment facilities in the Southern States of the United States. Under these criteria, in conjunction with the current criteria for irradiation facilities not located in the Southern States, we proposed to allow new irradiation facilities to be established in all the Southern States for the treatment of regulated articles that are imported, moved interstate from Hawaii or U.S. territories, or moved interstate from areas quarantined for certain pests of concern. We also proposed to amend § 319.56–46 to allow for irradiation treatment of mangoes from India either prior to or after arrival in the United States and § 319.56–47 to allow for irradiation treatment of tropical fruits from Thailand either prior to or after arrival in the United States.

We solicited comments concerning our proposal for 60 days ending November 28, 2011. We received seven comments by that date. One comment consisted of 3,529 identical or nearly identical letters. The comments were from an advocacy group, a State department of agriculture, and private citizens. Two commenters expressed support for the proposed rule. The remaining comments are discussed below by topic.

Some commenters stated that irradiation is an inappropriate way to deal with the risk of plant pests in imported foods. One commenter generally opposed the use of irradiation as a phytosanitary measure. One commenter opposed the rule as no irradiation facilities have been built in the currently approved locations in Southern States.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), regulated articles may be subject to remedial measures necessary to prevent the spread of plant pests. APHIS has determined that irradiation is an effective form of treatment against certain plant pests, and the regulations in 7 CFR part 305 provide for irradiation as a phytosanitary treatment for commodities or articles that require treatment prior to interstate movement or importation. Before approving irradiation as a treatment alternative for a specific pest, APHIS performs an

[1] To view the proposed rule, supporting and related documents, and the comments received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0100.*

evaluation to determine its effectiveness. As irradiation has been determined to be effective, there is no reason to deny importers the use of this treatment option.

Several commenters expressed concern about importing commodities into the United States prior to irradiation treatment, with one commenter indicating that Florida is a high-risk area for fruit flies and other invasive exotic pests. Another commenter stated that allowing irradiation facilities in Southern States would make it easier for pests to infest key agricultural States and expressed concern about the cost of containing and eradicating exotic pests. One commenter questioned why pest mitigation is not occurring prior to export and did not understand why the United States would perform this task for exporters.

As we indicated in the proposed rule, the regulations in § 305.9 allow for irradiation treatment of articles either prior to or after arrival in the United States, provided that an APHIS-approved facility is available. Articles may be treated in the United States instead of the exporting country for several reasons, including when the exporting country lacks the resources, technical expertise, or infrastructure to treat articles prior to export. The regulations require safeguards that have successfully prevented the introduction or dissemination of plant pests into or within the United States via the importation or interstate movement of irradiated articles since 1996, when irradiation was first used as a phytosanitary treatment. Based on our experience, we are confident that exporting countries have the ability to comply with all APHIS requirements and commodities from exporting countries can be safely treated in the United States.

APHIS recognizes that the Southern States have conditions favorable for the establishment of exotic fruit flies, and that is why we proposed additional safeguards for irradiation facilities in these States that go beyond the current requirements that apply to all irradiation facilities. These safeguards include the requirements that untreated articles may not be removed from their packaging prior to treatment under any circumstances, that refrigerated or air-conditioned conveyances must be used to transport regulated articles to the treatment facility, and that facilities have contingency plans for safely destroying or disposing of regulated articles if the facility was unable to properly treat a shipment. To help prevent establishment of pests in the unlikely event that they escape despite the required precautions, we will require trapping and other pest monitoring activities within 4 square miles of the facility to help prevent establishment of any escaped pests of concern. Those activities will be paid for by the facility. In addition, while APHIS monitors the treatment, the costs of treatment are the responsibility of the exporter or the importer, not APHIS.

APHIS will only approve a proposed facility if the Administrator determines that regulated articles can be safely transported to the facility from a port of entry or points of origin in the United States. We believe that the mitigations included in this final rule have proven effective in mitigating the risk associated with the importation of commodities into the United States, and thus will provide protection against the introduction or dissemination of pests of concern into the United States. In the environmental assessment (EA) that we prepared for the proposed rule, we evaluated the potential environmental effects from allowing untreated commodities to be transported into the Southern United States. In the EA, we determined that the mitigation measures included in this final rule are adequate to manage pest risks associated with amending the irradiation regulations and are expected to provide an effective level of phytosanitary protection.

Several commenters were concerned that the increased importation of commodities into the United States would have adverse economic effects on domestic producers. One commenter expressed concern that irradiation facilities are expensive and would increase the cost of food.

This rule does not authorize the importation of any additional fruits or vegetables, so it will not in and of itself lead to the increased importation of commodities. Any new imports would have to be authorized through our existing provisions in 7 CFR part 319. While the availability of additional treatment capacity in new areas might spur businesses to explore new or additional imports of articles, the PPA authorizes APHIS to consider plant pest risks when determining whether to allow new articles to be imported, rather than potential economic competition.

With respect to the costs of irradiation increasing the costs of food, the final rule does not add irradiation requirements for any commodity and therefore will not add any costs. We also note that in most cases a variety of phytosanitary treatments for a particular article will be available, so importers and marketers will choose the treatment option that makes the most sense to them from an economic and competitive standpoint. Products are unlikely to be imported unless their importation is economically feasible.

Many comments raised several issues that concern matters under the regulatory authority of other Federal agencies, not APHIS. We do not intend to reopen debate over matters that have been resolved through rulemaking by other agencies that have primary authority in these areas.

For example, one commenter suggested that irradiation facilities are unsafe and that workers may be exposed to dangerous levels of radiation. Many other commenters stated that USDA should not put consumers, U.S. farmers, and communities at risk by expanding the use of irradiation.

The Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and the U.S. Department of Transportation have the primary regulatory responsibility for issues including irradiation facility construction, operation, employee and public safety, and transportation of radioisotopes. Their requirements in these areas were established through public rulemaking by the respective agencies. In § 305.9(b) of the final rule, we are requiring other agencies that have regulatory oversight and requirements regarding irradiation facilities to concur in writing with the establishment of the facility prior to APHIS approval. In our EA, we evaluated the potential environmental effects from irradiation facilities and found that, provided required safety standards and control procedures are adhered to, no impacts to the human environment are expected.

Many commenters expressed concern that irradiation will make foods unsafe to eat. Commenters also stated that irradiation would reduce the nutritional value of fruits and vegetables, particularly through vitamin depletion. One commenter stated that ''many of the exporting countries will not have regulatory frameworks comparable to what U.S. producers are subjected to and irradiation will be used as a panacea to address those shortcomings.'' One commenter stated that irradiation can be a cover-up for poor food handling practices and could also mask the effects of spoilage.

The Food and Drug Administration (FDA) has primary regulatory responsibility for ensuring that approved irradiation doses do not render foods unsafe to eat. In our EA, we discuss the safety of food that has been irradiated, finding that irradiation does not harm the nutritional value of food, nor does it make the food unsafe to eat or adversely affect the balance

between microbial spoilage organisms and pathogenic organisms. Regulation of these matters, however, is outside the scope of the current rulemaking and outside the statutory authority of APHIS. We do note for the record the following information from the August 2000 report by the U.S. General Accounting Office (now known as the U.S. Government Accountability Office), ''Food Irradiation: Available Research Indicates That Benefits Outweigh Risks'' (GAO/RCED–00–217):

There is also some vitamin loss associated with irradiation—with certain vitamins, such as thiamin (B1), ascorbic acid (C), and alpha-tocopherol (E)—more affected by irradiation than others. However, according to the Institute of Food Technologists, it is highly doubtful that there would ever be any vitamin deficiency resulting from eating irradiated food. For example, thiamin is the most radiation-sensitive, water-soluble vitamin. With regard to this vitamin, the American Dietetic Association's position statement on food irradiation notes that FDA evaluated an extreme case in which all meat, poultry, and fish were irradiated at the maximum permissible dose under conditions resulting in the maximum destruction of thiamin. Even in these circumstances, the average thiamin intake was above the Recommended Dietary Allowance, leading FDA to conclude that there was no deleterious effect on the total dietary intake of thiamin as a result of irradiating foods. In its 1980 evaluation of food irradiation, the Joint Expert Committee convened by FAO, WHO, and IAEA concluded that irradiation caused no special nutritional problems in food. Another meeting of experts in 1997—organized by the same three international organizations—concluded that even high doses of irradiation (i.e., over 10 kGy) would not result in nutrient losses that could adversely affect a food's nutritional value.

Irradiation cannot reverse the spoilage process—the bad appearance, taste, and/or smell will remain the same after irradiation. In addition, current regulations do not allow food processors to use doses of irradiation on meat, poultry, fruits, and vegetables that would be high enough to sterilize extremely contaminated food. If a processor attempted to use a sterilization dose on many of these products, the odor, flavor, taste, and texture would be seriously impaired and the consumer would reject such products.

One commenter stated that the FDA has not been able to keep up with the volume of imports to ensure that they are safe for human consumption.

This matter is outside the scope of the current rulemaking and outside the statutory authority of APHIS. However, on this point we do note that the Food Safety Modernization Act was enacted on January 4, 2011, to enable FDA to better protect public health by strengthening the food safety system.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The final rule will benefit U.S. entities by clearly and transparently presenting the criteria that will govern the approval of additional irradiation facilities in the Southern United States, thereby facilitating their establishment. APHIS has not identified any costs associated with establishing the generic criteria for irradiation facility approval described in the rule.

Beyond helping to make the approval of future irradiation facilities in the Southern United States an efficient process, we do not anticipate that the criteria set forth in this rule will result in economic impacts on U.S. entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that providing generic criteria for new irradiation treatment facilities in the Southern States of the United States will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[2] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0383.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine,

[2] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0100.* The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 305.9 is amended as follows:

■ a. By revising paragraph (a)(1) to read as set forth below.

■ b. In paragraph (b), by adding a sentence after the first sentence to read as set forth below.

■ c. By adding a sentence after the paragraph (c) introductory text heading to read as set forth below.

■ d. In paragraph (e) introductory text, by adding a sentence after the second sentence to read as set forth below.

■ e. In paragraph (e)(1) introductory text, by adding a new first sentence after the paragraph heading to read as set forth below.

■ f. By revising the OMB control number at the end of the section to read as set forth below.

§ 305.9 Irradiation treatment requirements.

* * * * *

(a) * * *

(1) Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any imported regulated article either prior to shipment to the United States or in the United States. For any regulated article moved interstate from Hawaii or U.S. territories, irradiation treatment may be conducted either prior to movement to the mainland United States or in the mainland United States. Irradiation facilities may be located in any State on the mainland United States. For irradiation facilities located in the States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, the following additional conditions must be met:

(i) Prospective facility operators must submit a detailed layout of the facility site and its location to APHIS. APHIS will evaluate plant health risks based on the proposed location and layout of the facility site. APHIS will only approve a proposed facility if the Administrator determines that regulated articles can be safely transported to the facility from port of entry or points of origin in the United States.

(ii) The government of the State in which the facility is to be located must concur in writing with the establishment of the facility or, if it does not concur, must provide a written explanation of concern based on pest risks. In instances where the State government does not concur with the proposed facility location, APHIS and the State will agree on a strategy to resolve the pest risk concerns prior to APHIS approval.

(iii) Untreated articles may not be removed from their packaging prior to treatment under any circumstances.

(iv) The facility must have contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles if the facility is unable to properly treat a shipment.

(v) The facility may only treat articles approved by APHIS for treatment at the facility. Approved articles will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section.

(vi) Arrangements for treatment must be made before the departure of a consignment from its port of entry or points of origin in the United States. APHIS and the facility must agree on all parameters, such as time, routing, and conveyance, by which the consignment will move from the port of entry or points of origin in the United States to the treatment facility.

(vii) Regulated articles must be conveyed to the facility in a refrigerated (via motorized refrigeration equipment or other methods including ice or insulation) or air-conditioned conveyance at a temperature that minimizes the mobility of the pests of concern for the article.

(viii) The facility must maintain and provide APHIS with an updated map identifying places where horticultural or other crops are grown within 4 square miles of the facility. Proximity of host material to the facility will necessitate trapping or other pest monitoring activities to help prevent establishment of any escaped pests of concern, as approved by APHIS; these activities will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section. The treatment facility must have a pest management plan within the facility.

(ix) The facility must comply with any additional requirements that APHIS may require to prevent the escape of plant pests during transport to and from the irradiation facility itself, for a particular facility based on local conditions, and for any other risk factors of concern. These activities will be listed in the compliance agreement required in paragraph (c)(1)(i) of this section.

* * * * *

(b) * * * Other agencies that have regulatory oversight and requirements must concur in writing with the establishment of the facility prior to APHIS approval. * * *

(c) * * * Compliance agreements for facilities located in States listed in paragraph (a)(1) of this section may also contain additional provisions as described in paragraphs (a)(1)(i) through (a)(1)(ix) of this section. * * *

* * * * *

(e) * * * Facilities must be located within the local commuting area for APHIS employees for inspection purposes.

(1) * * * Facilities shall be located within an area over which the U.S. Department of Homeland Security is assigned authority to accept entries of merchandise, to collect duties, and to enforce the provisions of the customs and navigation laws in force. * * *

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0155, 0579–0215, and 0579–0198, 0579– 0383)

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–46 [Amended]

■ 4. Section § 319.56–46 is amended as follows:

■ a. In paragraph (a), by removing the words ''in India''.

■ b. In paragraph (e) introductory text, by removing the words ''certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear'' and adding the word ''with'' in their place.

§ 319.56–47 [Amended]

■ 5. Section 319.56–47 is amended as follows:

■ a. In paragraph (b), by removing the second sentence.

■ b. In paragraph (c)(1), by removing the words ''that the litchi were treated with irradiation as described in paragraph (b) of this section and''.

■ c. In paragraph (c)(2), by removing the words ''with an additional declaration

stating that the longan, mango, mangosteen, pineapple, or rambutan were treated with irradiation as described in paragraph (b) of this section''.

Done in Washington, DC, this 16th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17725 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 55 and 81

[Docket No. 00–108–9]

Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our interim final rule that will establish a herd certification program to control chronic wasting disease (CWD) in farmed or captive cervids in the United States. The interim final rule requested comment on our decision that our regulations will set minimum requirements for the interstate movement of farmed or captive cervids but not preempt State or local laws or regulations that are more restrictive than our regulations, except any such laws or regulations that prohibit or further restrict the transit through a State of deer, elk, and moose that are otherwise eligible for interstate movement. This action will allow interested persons additional time to prepare and submit comments on our preemption policy with respect to CWD. This document also indicates that we will consider comments on issues other than our preemption policy for future rulemaking.

DATES: We will consider all comments that we receive on or before August 13, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2006-0118-0199.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. 00–108–8, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0118* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Patrice Klein, Senior Staff Veterinarian, National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 851–3435.

SUPPLEMENTARY INFORMATION: On June 13, 2012, we published in the **Federal Register** (77 FR 35542–35571, Docket No. 00–108–8) an interim final rule that will establish a herd certification program to control chronic wasting disease (CWD) in farmed or captive cervids in the United States. The interim final rule will be effective on August 13, 2012.

In the interim final rule, we requested comments specifically on our decision not to preempt State and local laws and regulations that are more restrictive than our regulations with respect to CWD, except any such laws or regulations that prohibit or further restrict the transit through a State of deer, elk, and moose that are otherwise eligible for interstate movement. That decision was discussed in section III of the Background section of the interim final rule, under the heading ''APHIS' Decision Not to Preempt More Restrictive State Requirements on Farmed or Captive Cervids With Respect to CWD,'' beginning on 77 FR 35545.

Comments on our decisions regarding preemption of State and local laws and regulations were required to be received on or before July 13, 2012. We are reopening the comment period on Docket No. 00–108–8 until August 13, 2012. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between July 14, 2012, and the date of this notice.

The interim final rule indicated that we will publish another document in the **Federal Register** after the comment period closes that will include a discussion of any comments we receive on our preemption policy and any amendments we are making to the rule. We still plan to do this. However, we have received comments on aspects of the interim final rule other than our preemption policy. While we will not address these comments in our document discussing our preemption policy, we will consider these comments to determine whether future rulemaking may be necessary, and we encourage commenters to address any aspect of the interim final rule that they wish to.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 16th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17726 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1412; Directorate Identifier 2011–NM–158–AD; Amendment 39–17088; AD 2012–12–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

Correction

In rule document 2012–14544 appearing on pages 37781–37783 in the issue of Monday, June 25, 2012 make the following correction:

§ 39.13 [Corrected]

On page 37783, in the first column, in the tenth full paragraph, under the heading ''(c) Applicability'', the second line should read ''Model 777–200 and –300 series airplanes;''.

[FR Doc. C1–2012–14544 Filed 7–19–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0055; Airspace Docket No. 11–ACE–12]

RIN 2120–AA66

Modification of VOR Federal Airways V–10, V–12, and V–508 in the Vicinity of Olathe, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies three VHF Omnidirectional Range (VOR) Federal airways V–10, V–12, and V–508 in the vicinity of Olathe, KS. The FAA is taking this action to adjust the airway route structure due to the planned decommissioning of the Johnson County VOR navigation aid located on Johnson County Executive Airport, Olathe, KS. The establishment of the WETZL fix is canceled due to lack of extended service volume, and replaced with the existing DODSN fix, thereby making a one-degree correction to the Napoleon, MO, radial in the V–10 and V–12 airway descriptions. This action also removes the reference to the decommissioning of the Distance Measuring Equipment (DME) portion of the Johnson County VOR/DME navigation aid, as it remains in service.

DATES: *Effective date:* 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 21, 2012, the FAA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) to modify VOR Federal airways V–10, V–12, and V–508, in the vicinity of Olathe, KS (77 FR 9876), due to the planned decommissioning of the Johnson County VOR navigation aid. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One positive comment from the Aircraft Owners and Pilots Association was received supporting the proposed action and no negative comments were received.

The NPRM referenced the planned decommissioning of the Johnson County VOR/DME navigation aid in the Summary, Background, and Proposal sections, in error. The FAA's planned decommissioning action is for the VOR portion of the Johnson County VOR/DME navigation aid only. The DME equipment will remain in service.

Subsequent to the ending of the comment period, the proposed action to establish the WETZL fix in the same geographic location as the decommissioned Johnson County VOR, and use it to replace the VOR in the V–10 and V–12 airway descriptions, was changed to using the DODSN fix already established on the airways. The FAA took this action based on the airways not passing flight check at multiple altitudes from 4,000 feet MSL to 15,000 feet MSL due to the lack of extended service volume issues at WETZL fix. The effect of this change on the existing V–10 and V–12 airways is negligible; requiring a one-degree correction to the Napoleon, MO, navigation aid radial used to describe the fix's location from what was proposed in the NPRM. The corrected Napoleon, MO, radial information is changed from ''Napoleon, MO, 242°(T)/235°(M) radial'' to ''Napoleon, MO, 243°(T)/236°(M) radial.'' Only the true radial information is published in this rule.

With the exception of minor editorial changes and the changes noted above, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying V–10, V–12, and V–508 in the vicinity of Olathe, KS, due to the planned decommissioning of the OJC VOR in July 2012.

To retain the airway structure of V–10 and V–12 in the vicinity of Olathe, KS, the DODSN fix (described by the intersection of Emporia, KS, and Napoleon, MO, navigation aid radials), replaces the OJC VOR in the airway descriptions. Specifically, the amended V–10 and V–12 airway descriptions replace the ''Johnson County, KS'' reference with ''INT Emporia 063° and Napoleon, MO, 243° radials''.

The amended V–508 now terminates at the existing RUGBB fix (described by the intersection of Topeka, KS, and Kansas City, MO, navigation aid radials). Ending V–508 at the RUGBB fix retains the capability for eastbound aircraft to continue to destinations further east or northeast via transition from V–508 to V–502.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal Airways listed in this document will be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies VOR Federal airways in the vicinity of Olathe, KS.

Environmental Review

The FAA has determined that this action is categorically excluded from further environmental documentation according to FAA Order 1050.1E, paragraphs 311a. The implementation of this action will not result in any extraordinary circumstances in accordance with paragraph 304 of Order 1050.1E.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 FAA Order 7400.9V,

Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal airways.

* * * * *

V–10 [Amended]

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; INT Emporia 063° and Napoleon, MO, 243° radials; Napoleon; Kirksville, MO; Burlington, IA; Bradford, IL; to INT Bradford 058° and Joliet, IL, 287° radials. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; Gipper; Litchfield, MI; INT Litchfield 101° and Carleton, MI, 262° radials; Carleton; INT Jefferson, OH, 279° and Youngstown, OH, 320° radials; Youngstown; INT Youngstown 116° and Revloc, PA, 300° radials; Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; to Lancaster. The airspace within Canada is excluded.

* * * * *

V–12 [Amended]

From Gaviota, CA; San Marcus, CA; Palmdale, CA; 38 miles, 6 miles wide, Hector, CA; 12 miles, 38 miles, 85 MSL, 14 miles, 75 MSL, Needles, CA; 45 miles, 34 miles, 95 MSL, Drake, AZ; Winslow, AZ; 30 miles, 85 MSL, Zuni, NM; Albuquerque, NM; Otto, NM; Anton Chico, NM; Tucumcari, NM; Amarillo, TX; Mitbee, OK; Anthony, KS; Wichita, KS; Emporia, KS; INT Emporia 063° and Napoleon, MO, 243° radials; Napoleon; INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO; Troy, IL; Bible Grove, IL; Shelbyville, IN; Richmond, IN; Dayton, OH; Appleton, OH; Newcomerstown, OH; Allegheny, PA; Johnstown, PA; Harrisburg, PA; INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown.

* * * * *

V–508 [Amended]

From Hill City, KS; Hays, KS; Salina, KS; INT Salina 082° and Manhattan, KS, 207° radials; Manhattan; INT Manhattan 078° and Topeka, KS, 293° radials; Topeka; to INT Topeka 112° and Kansas City, MO, 228° radials.

Issued in Washington, DC, on July 12, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations & ATC Procedures Group.

[FR Doc. 2012–17510 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30851; Amdt. No. 3486]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 20, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and

textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 6, 2012.

John Duncan,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 26 JULY 2012

Red Cloud, NE., Red Cloud Muni, Takeoff Minimums and Obstacle DP, Orig

Effective 23 AUGUST 2012

Greensboro, GA, Greene County Rgnl, LOC RWY 25, Amdt 3A
Greensboro, GA, Greene County Rgnl, RNAV (GPS) RWY 25, Amdt 1A
Tompkinsville, KY, Tompkinsville-Monroe County, RNAV (GPS) RWY 4, Orig-A
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 3A
Detroit/Grosse Ile, MI, Grosse Ile Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Owatonna, MN, Owatonna Degner Rgnl, RNAV (GPS) RWY 30, Orig-A
Monticello, NY, Sullivan County Intl, ILS OR LOC RWY 15, Amdt 6
Monticello, NY, Sullivan County Intl, NDB RWY 15, Amdt 7, CANCELED
Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 15, Amdt 1
Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 33, Amdt 2
Monticello, NY, Sullivan County Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Monticello, NY, Sullivan County Intl, VOR/DME RWY 33, Amdt 4
Houston, TX, Dan Jones Intl, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Houston, TX, Dan Jones Intl,VOR/DME–C, Orig, CANCELED
Lubbock, TX, Lubbock Preston Smith Intl, RNAV (GPS) RWY 26, Amdt 2
Black River Falls, WI, Black River Falls Area, NDB RWY 8, Amdt 6, CANCELED
Black River Falls, WI, Black River Falls Area, RNAV (GPS) RWY 8, Amdt 1
Black River Falls, WI, Black River Falls Area, RNAV (GPS) RWY 26, Orig
Black River Falls, WI, Black River Falls Area, Takeoff Minimums and Obstacle DP, Amdt 2
Menomonie, WI, Menomonie Muni-Score Field, RNAV (GPS) RWY 9, Orig-A
Menomonie, WI, Menomonie Muni-Score Field, RNAV (GPS) RWY 27, Orig-A
Wautoma, WI, Wautoma Muni, GPS RWY 31, Orig-A, CANCELED
Wautoma, WI, Wautoma Muni, RNAV (GPS) RWY 13, Orig
Wautoma, WI, Wautoma Muni, RNAV (GPS) RWY 31, Orig

Effective 20 SEPTEMBER 2012

Soldotna, AK, Soldotna, VOR/DME–A, Amdt 7B
Marina, CA, Marina Muni, VOR RWY 11, Amdt 2
Marina, CA, Marina Muni, VOR/DME RWY 29, Amdt 2B
San Luis Obispo, CA, San Luis County Rgnl, ILS RWY 11, Amdt 2A
San Luis Obispo, CA, San Luis County Rgnl, LOC RWY 11, Orig-A
Burlington, CO, Kit Carson County, Takeoff Minimums and Obstacle DP, Orig
Lamar, CO, Lamar Muni, RNAV (GPS) RWY 8, Amdt 1
Rifle, CO, Garfield County Rgnl, ILS RWY 26, Amdt 3
Rifle, CO, Garfield County Rgnl, LOC/DME–A, Amdt 9
Rifle, CO, Garfield County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 10
Rifle, CO, Garfield County Rgnl, VOR/DME–C, Amdt 3
Fort Pierce, FL, St Lucie County Intl, ILS OR LOC RWY 10R, Amdt 3
Fort Pierce, FL, St Lucie County Intl, NDB RWY 28L, Amdt 2
Fort Pierce, FL, St Lucie County Intl, NDB–A, Orig-D
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 10R, Amdt 1
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 14, Amdt 2
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 28L, Amdt 1
Fort Pierce, FL, St Lucie County Intl, RNAV (GPS) RWY 32, Amdt 1A
Fort Pierce, FL, St Lucie County Intl, VOR/DME RWY 14, Amdt 9A
Merritt Island, FL, Merritt Island, RNAV (GPS) RWY 11, Amdt 1A
Orlando, FL, Orlando Kissimmee Gateway, VOR/DME–A, Amdt 1
Orlando, FL, Orlando Sanford Intl, ILS OR LOC RWY 27R, Amdt 2
Orlando, FL, Orlando Sanford Intl, RNAV (GPS) RWY 27L, Orig
Orlando, FL, Orlando Sanford Intl, RNAV (GPS) RWY 27R, Amdt 2
Sebastian, FL, Sebastian Muni, RNAV (GPS) RWY 4, Orig-A
Titusville, FL, Space Coast Rgnl, ILS OR LOC RWY 36, Amdt 12A
Vero Beach, FL, Vero Beach Muni, VOR RWY 11R, Amdt 14
Vero Beach, FL, Vero Beach Muni, VOR/DME RWY 29L, Amdt 4
Macon, GA, Middle Georgia Rgnl, ILS OR LOC/DME RWY 5, Amdt 1
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 5, Amdt 1
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 13, Amdt 2
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 23, Amdt 2
Macon, GA, Middle Georgia Rgnl, RNAV (GPS) RWY 31, Amdt 1
Macon, GA, Middle Georgia Rgnl, VOR RWY 13, Amdt 10
Macon, GA, Middle Georgia Rgnl, VOR RWY 23, Amdt 4
Audubon, IA, Audubon County, NDB RWY 32, Amdt 5A, CANCELED

Nampa, ID, Nampa Muni, RNAV (GPS) RWY 11, Amdt 2
Indianapolis, IN, Indianapolis Intl, ILS OR LOC RWY 32, Amdt 19
Plymouth, MA, Plymouth Muni, ILS OR LOC/DME RWY 6, Amdt 1B
Sturgis, MI, Kirsch Muni, RNAV (GPS) RWY 18, Amdt 1
Festus, MO, Festus Memorial, Takeoff Minimums and Obstacle DP, Amdt 3
Houston, MO, Houston Memorial, RNAV (GPS) RWY 16, Orig
Houston, MO, Houston Memorial, RNAV (GPS) RWY 34, Orig
Houston, MO, Houston Memorial, Takeoff Minimums and Obstacle DP, Orig
Helena, MT, Helena Rgnl, ILS OR LOC Y RWY 27, Amdt 3
Helena, MT, Helena Rgnl, ILS OR LOC Z RWY 27, Amdt 1
Jacksonville, NC, Albert J Ellis, Takeoff Minimums and Obstacle DP, Amdt 2
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 5, Amdt 3A
Lima, OH, Lima Allen County, ILS OR LOC RWY 28, Amdt 5
Lima, OH, Lima Allen County, RNAV (GPS) RWY 10, Amdt 1
Lima, OH, Lima Allen County, RNAV (GPS) RWY 28, Amdt 2
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 3, Amdt 2
Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 35, Orig
Philadelphia, PA, Philadelphia Intl, ILS OR LOC/DME RWY 27R, ILS RWY 27R (SA CAT I),
ILS RWY 27R (SA CAT II), Amdt 10E
Ponce, PR, Mercedita, VOR RWY 30, Amdt 10A, CANCELED
Ponce, PR, Mercedita, VOR–A, Orig
Lemmon, SD, Lemmon Muni, Takeoff Minimums and Obstacle DP, Orig
Fredericksburg, TX, Gillespie County, RNAV (GPS) RWY 14, Amdt 1
Fredericksburg, TX, Gillespie County, RNAV (GPS) RWY 32, Amdt 1
Houston, TX, West Houston, RNAV (GPS) RWY 15, Amdt 1
Houston, TX, West Houston, RNAV (GPS) RWY 33, Amdt 1
Houston, TX, West Houston, RNAV (GPS) Z RWY 33, Orig, CANCELED
Houston, TX, West Houston, Takeoff Minimums and Obstacle DP, Amdt 4
Houston, TX, West Houston, VOR/DME RNAV RWY 15, Amdt 4, CANCELED
Houston, TX, West Houston, VOR/DME RNAV RWY 33, Amdt 4, CANCELED
Houston, TX, West Houston, VOR–D, Amdt 1
Pecos, TX, Pecos Muni, GPS RWY 14, Orig-B, CANCELED
Pecos, TX, Pecos Muni, RNAV (GPS) RWY 14, Orig
Pecos, TX, Pecos Muni, RNAV (GPS) RWY 32, Orig
Pecos, TX, Pecos Muni, Takeoff Minimums and Obstacle DP, Orig
Heber, UT, Heber City Muni-Russ McDonald Field, COOLI (RNAV) THREE Graphic DP
Heber, UT, Heber City Muni-Russ McDonald Field, Takeoff Minimums and Obstacle DP, Amdt 3.
Grantsburg, WI, Grantsburg Muni, Takeoff Minimums and Obstacle DP, Orig-A
Neillsville, WI, Neillsville Muni, GPS RWY 27, Orig, CANCELED
Neillsville, WI, Neillsville Muni, NDB RWY 28, Amdt 7
Neillsville, WI, Neillsville Muni, RNAV (GPS) RWY 10, Orig
Neillsville, WI, Neillsville Muni, RNAV (GPS) RWY 28, Orig
Neillsville, WI, Neillsville Muni, Takeoff Minimums and Obstacle DP, Orig
New Lisbon, WI, Mauston-New Lisbon Union, GPS RWY 32, Amdt 1, CANCELED
New Lisbon, WI, Mauston-New Lisbon Union, RNAV (GPS) RWY 14, Orig
New Lisbon, WI, Mauston-New Lisbon Union, RNAV (GPS) RWY 32, Orig
Worland, WY, Worland Muni, RNAV (GPS) RWY 16, Orig
Worland, WY, Worland Muni, RNAV (GPS) RWY 34, Orig
Worland, WY, Worland Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Worland, WY, Worland Muni, VOR RWY 16, Amdt 6

[FR Doc. 2012–17289 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 679 and 680

[Docket No. 110627357–2209–03]

RIN 0648–BB24

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93

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

ACTION: Final rule and notice of approval of an FMP amendment.

SUMMARY: NMFS publishes regulations to implement Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The regulations apply exclusively to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the Gulf of Alaska (GOA) (Central and Western GOA). Amendment 93 establishes separate prohibited species catch (PSC) limits in the Central and Western GOA for Chinook salmon (*Oncorhynchus tshawytscha*), which would cause NMFS to close the directed pollock fishery in the Central or Western regulatory areas of the GOA, if the applicable limit is reached. This action also requires retention of salmon by all vessels in the Central and Western GOA pollock fisheries until the catch is delivered to a processing facility where an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. This action makes several revisions to the Prohibited Species Donation (PSD) program. Amendment 93 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective August 25, 2012, except for: 50 CFR 679.21(h)(2) will be effective January 1, 2013, and 50 CFR 679.21(h)(3) will be effective August 25, 2012, until November 1, 2012.

ADDRESSES: Electronic copies of the proposed and final rules, the Environmental Assessment (EA), and Regulatory Impact Review for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Mary Grady, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone of the GOA under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Notice of Availability for Amendment 93 was published in the **Federal Register** on November 23, 2011 (76 FR 72384), with a 60-day comment period that ended January 23, 2012. The Secretary of Commerce (Secretary) approved Amendment 93 on February 17, 2012. The proposed rule to implement Amendment 93 was published in the **Federal Register** on December 14, 2011 (76 FR 77757). The 45-day comment period on the proposed rule ended January 30, 2012. NMFS

received written comments on Amendment 93 and the proposed rule from four different entities. After considering these comments, the Secretary of Commerce approved Amendment 93 on February 17, 2012. A summary of these comments and the responses by NMFS are provided under Response to Comments below.

Regulatory Amendments

The preamble to the proposed rule provides a detailed description of the reasons for and provisions of Amendment 93 and its implementing rule (76 FR 77757, December 14, 2011). The proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**). This final rule makes the following regulatory amendments to the management of the directed pollock trawl fisheries in the Central and Western GOA to reduce Chinook salmon bycatch and to the PSD program.

Prohibitions

This final rule adds prohibitions under § 679.7(b)(8) to specify when salmon must be retained and discarded in the Central and Western GOA directed pollock fisheries. The final rule adds paragraph (b)(8) to expressly prohibit any action that does not comply with the regulations described below for § 679.21(h). This is necessary to expressly inform participants in the pollock trawl fisheries in the Central and Western GOA that except for salmon under the PSD program at § 679.26, all salmon must be discarded, following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed.

PSC Management

The final rule revises PSC management measures under § 679.21 to establish Chinook salmon PSC limits and management measures for directed pollock trawl fishing in the Central and Western Reporting Areas of the GOA. The final rule revises paragraph (b)(2)(ii) to add an exception for salmon PSC caught by vessels directed fishing for pollock with trawl gear in the Central and Western GOA to the requirement to immediately sort catch and return salmon PSC to the sea. The final rule also revises paragraph (b)(2)(ii) to clarify that the requirement to immediately sort catch and discard PSC does not apply to PSC that may be retained pursuant to a permit issued under the PSD program. This clarification is necessary to ensure participants in the PSD program may retain salmon for donation purposes and to facilitate observer sampling and counting of all salmon. The final rule revises paragraph (b)(3) to limit the scope of the rebuttable presumption regarding PSC retained on board that was previously in place. As revised, paragraph (b)(3) does not establish a rebuttable presumption that any salmon retained on board during a directed pollock fishery in the Central or Western GOA was caught and retained in violation of § 679.21. This change is necessary to ensure that vessels that comply with the requirement to retain salmon are not presumed to violate § 679.21. In addition, this change maintains the existing rebuttable presumption that any Chinook salmon retained on board during a directed pollock fishery in the GOA outside of the Western and Central reporting areas was caught and retained in violation of this section.

The final rule adds PSC management measures under § 679.21(h) to establish Chinook salmon PSC limits for the pollock trawl fisheries in the Central and Western GOA. Paragraph (h)(1) specifies that the regulations in this paragraph apply to federally permitted vessels directed fishing for pollock in the Central and Western GOA reporting areas and processors taking deliveries from such vessels. Paragraph (h)(2) establishes GOA Chinook salmon PSC limits. Paragraph (h)(2)(i) specifies an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. Paragraph (h)(2)(ii) specifies an annual limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA. Paragraph (h)(3) sets Chinook salmon PSC limits and allocations for the Central and Western GOA pollock fisheries during the C and D seasons in 2012. The 2012 PSC limits are effective until November 1, 2012. Paragraphs (h)(3)(i) and (ii) specify a PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA for the C and D seasons in 2012, and a PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA for the C and D seasons in 2012. These revisions are necessary to establish the annual Chinook salmon PSC limits and the 2012 C and D season limits recommended by the Council and approved by the Secretary.

Paragraph (h)(4) of § 679.21 requires temporary salmon retention in the Central and Western GOA directed pollock fisheries. The operator of a vessel and the manager of a shoreside processor or stationary floating processor may not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon are taken incidental to a Central or Western GOA directed pollock fishery, until after an observer at the processing facility has been provided the opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon.

Paragraph (h)(5) of § 679.21 requires that all salmon, except for salmon donated pursuant to the PSD program at § 679.26, must be discarded following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed. This requirement is necessary to ensure observers are provided the opportunity to count salmon and to take biological samples, and to ensure that the salmon not donated is discarded, as required of all PSC.

Paragraph (h)(6) of § 679.21 establishes Chinook salmon PSC closure management. NMFS would close pollock fisheries using trawl gear if, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central or Western GOA will catch all the Chinook salmon PSC limit specified for that area. NMFS will publish a notice in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock. This step is necessary to allow NMFS to manage area closures for the pollock fisheries in the Central and Western Regulatory Areas of the GOA based on Chinook salmon PSC reaching the Chinook salmon PSC limits for the Central and Western Reporting Areas. The State of Alaska will manage the closure of the State waters parallel pollock fishery.

Prohibited Species Donation Program

This final rule revises § 679.26(c)(1) reporting and recordkeeping requirements for the PSD program to add the Central and Western GOA pollock fisheries and to ensure observer sampling of donated fish. This is necessary to facilitate the counting and biological sampling of donated salmon and to ensure NMFS applies the Chinook salmon donated to the PSD program to the PSC limits.

In addition, this final rule modifies the PSD program regulations to implement the intent of the program to allow participation by all types of near shore, stationary processors for halibut donations. Paragraph (a)(2) of § 679.26 is revised to include stationary floating processors as eligible to receive and process donated halibut. Stationary floating processors are generally located

near shore and remain in one location and are therefore similar to a shoreside processor for purposes of the halibut donation program. This revision is necessary to meet the Council's intent under Amendment 50 to the GOA FMP that halibut that cannot be sorted at sea and delivered to a processor located in one location in a near shore area may be donated to the PSD program.

The final rule revises paragraph (b)(1)(xi) of § 679.26 to clarify information required for the application process to become an authorized PSD distributor. This rule removes the requirement that the vessel or processor provide a fax number, as faxes are no longer used for communication between NMFS and the vessels or processors for the purposes of this program. This revision reduces the reporting burden for the PSD applicant.

The final rule revises paragraph (b)(2)(iv) of § 679.26 to change the selection criteria considered by the Regional Administrator in issuing a PSD permit. The revision changes the consideration of the potential number of groundfish trawl vessels and processors in the fishery to the potential number of vessels and processors participating in the PSD program. The number of vessels and processors in the groundfish fishery is not an important consideration to determine how many distributors should participate in the program. Instead, the Regional Administrator will consider the number of vessels and processors currently in the PSD program, along with the number and qualification of applicants, the number of harvesters and quantity of fish that applicants can effectively administer, and the anticipated level of bycatch of prohibited species. A comparison of the number of vessels and processors currently in the program with the number of harvesters that prospective distributors can effectively administer provides a more meaningful basis by which to determine the appropriate number of distributors for the program. This revision focuses the considerations for issuing a permit on pertinent vessel and processor information.

Changes From the Proposed Rule

This final rule does not include a provision imposing increased observer coverage on vessels less than 60 feet length overall (LOA) that participate in the directed pollock fishery in the Central or Western regulatory areas of the GOA by January 2013. Consistent with the Council's intent, the proposed rule stated that increased observer coverage on vessels less than 60 feet LOA under this action would only be effective until the restructured observer program is implemented (76 FR 77762). It would be premature to adopt a final rule that imposes such increased observer coverage at this time, because NMFS approved Amendment 86 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the GOA FMP on June 7, 2012. Having approved these FMP amendments that provide for a restructured observer program, NMFS intends to fulfill its legal responsibility to implement the amendments. The proposed rule for Amendment 86 and Amendment 76 was published on April 18, 2012, with the comment period ending on June 18, 2012 (77 FR 23266). NMFS has not yet made any final decisions regarding the publication of a final rule to implement Amendments 86 and 76 and NMFS recognizes that revisions to the proposed rule may occur as a result of public comments. Nonetheless, at this time, NMFS anticipates that the restructured observer program will be implemented by January 1, 2013, meeting the Council's intent of increased coverage under Amendment 93.

Implementing a short-term change to the observer program for these vessels between the effective date of this final rule and January 2013, would burden NMFS and fishery participants without providing much improvement over current data collection efforts. Moreover, such a short-term change is not needed to meet the Council's intent under Amendment 93. Rather than require an interim change to observer requirements that would provide little data collection benefit relative to the effort the agency would expend to implement this short-term program, resources will be used to ready NMFS and the industry for the restructured observer program that NMFS has proposed and anticipates will be implemented beginning in 2013. If NMFS does not implement the restructured observer program by January 1, 2013, the agency will consult with the Council regarding how to achieve observer coverage for vessels less than 60 feet LOA under Amendment 93 until the restructured observer program is implemented. Therefore, NMFS changed this final rule for GOA Chinook PSC management to omit the increased observer coverage set forth in the proposed rule. NMFS consulted with the Council in June 2012 regarding this approach to observer coverage for these vessels under the final rule for Amendment 93.

Response to Comments

NMFS received 4 letters containing 12 unique comments during the public comment periods for the Notice of Availability and for the proposed rule. One letter received was not responsive to this action. A summary of relevant comments, grouped by subject matter and NMFS' responses, follows.

Comment 1: Several commenters expressed general support for Amendment 93 to the FMP and its implementing regulations.

Response: NMFS acknowledges these comments.

Comment 2: The range of alternatives considered in the environmental assessment was inadequate, and NMFS should have considered lower PSC limits.

Response: The environmental assessment for this action included a reasonable range of alternatives that met the purpose and need of this action to take prompt action to protect against the risk of high Chinook salmon PSC levels. The Council's problem statement recognizes the obligation under the MSA to minimize Chinook salmon bycatch to the extent practicable. The alternatives included (1) no action; (2) GOA-wide PSC limits of 15,000, 22,500, 25,000, and 30,000 Chinook salmon; (3) alternative ways of allocating the PSC limits between the Central and Western Reporting Areas; and (4) a 25-percent buffer for the PSC limit in one out of three consecutive years. Alternative 2 included a range of PSC caps that would reduce Chinook salmon PSC to varying degrees, with lower limits resulting in potentially greater adverse economic impacts on fishery participants. During the Council's development of this action, no member of the public objected to the adequacy of the range of GOA-wide PSC limits evaluated in the Council's Public Review draft of the Environmental Assessment. Throughout the Council process, no member of the public commented that the Council must consider GOA-wide PSC limits below 15,000 Chinook salmon, nor did any member of the public suggest that a lower GOA-wide PSC limit was needed to achieve the Council's stated purpose, which was to diminish the risk of high Chinook salmon PSC levels to the extent practicable.

The Council considered the importance of equity among user groups in recommending Amendment 93. The Council noted that the Chinook salmon resource is of value to many stakeholders, including but not limited to commercial, recreational, and cultural user groups, and it is a resource that is currently fully allocated. The Council also recognized that efforts to reduce Chinook salmon PSC in the pollock fishery would impose costs on participants in the pollock fishery. The

preferred alternative balances the need to minimize Chinook PSC to the extent practicable, consistent with the MSA National Standard 9, with the requirements of National Standard 1, to enable the pollock fishery to contribute to the achievement of optimum yield in the groundfish fishery. In an effort to strike this balance, the Council considered a range of PSC limits. As indicated by the analysis (see **ADDRESSES**), a PSC limit of 15,000 fish would result in considerable amounts of foregone harvest in the pollock fishery, and relatively high costs (in terms of foregone revenue) per salmon saved. PSC limits lower than 15,000 fish would be expected to further increase these costs.

A Chinook salmon PSC limit of 15,000 would impose a greater burden on small entities that participate in the pollock fishery by constraining pollock fishing to a greater degree than the 25,000 fish limit of the preferred alternative. Any lower PSC limits would have further burdened fishery participants and were not considered practicable by the Council for minimizing Chinook salmon bycatch because they were determined to be unnecessarily constraining to the pollock fisheries. Given the considerable costs per salmon saved at PSC limits of 15,000 or less and uncertainty over the added benefits to individual Chinook stocks of such limits, the environmental assessment evaluated a reasonable range of alternatives.

Comment 3: The proposed limit does not comply with National Standard 9 and the precautionary principle.

Response: In developing Amendment 93, the Council considered consistency with the MSA's ten National Standards, including National Standard 9, which requires NMFS to minimize bycatch to the extent practicable, and National Standard 1, to achieve optimum yield for the managed fishery. The Council designed Amendment 93 to balance the competing requirements of the National Standards. Specifically, the Council recognized the need to balance and be consistent with the mandate of National Standard 9 and the mandate of National Standard 1. In selecting the overall limit on Chinook salmon PSC, the Council considered a range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while preserving the potential for the full harvest of the pollock TAC. The Council considered the trade-offs between Chinook salmon saved and the forgone pollock catch. The EA and RIR include a description of the alternatives and a comparative analysis of the potential impacts of the alternative PSC limits (see **ADDRESSES**).

The action follows the precautionary principle by implementing conservation measures to reduce overall Chinook salmon PSC, even though data is not available to determine the impact of Chinook salmon PSC on individual Chinook salmon stocks. Even though effects on individual Chinook salmon stocks cannot be determined at this time, this action reduces overall potential impacts and improves data collection, which is a necessary precursor to any future analysis of the potential impacts of the pollock fisheries on individual Chinook salmon stocks. The PSC limits minimize bycatch to the extent practicable given the tools currently available to the fleet, the derby-style prosecution of the fishery, the uncertainty about whether the bycatch has adverse effects on any particular Chinook salmon stocks, and the need to ensure that the pollock fishery contributes to the achievement of optimum yield in the groundfish fishery.

Comment 4: The proposed limit does not adequately address the full costs and benefits to each user sector and did not provide the public with the opportunity to review more stringent PSC limits that appropriately respond to uncertainties about the Chinook resource, impacts to downstream users, and the requirements of National Standard 9.

Response: See response above to comment 2 regarding a more stringent PSC limit and response to comment 3 above regarding uncertainties about impacts to the Chinook salmon resource. The Council considered the importance of equity among user groups in recommending Amendment 93. In addition to providing a fair and equitable apportionment of the total GOA-wide PSC limit between the Central and Western GOA pollock fisheries, the Council also considered the needs of Chinook salmon users. The Council noted that the Chinook salmon resource is of value to many stakeholders, including, but not limited to, commercial, recreational, and cultural user groups, and it is a resource that is currently fully allocated. By recommending a PSC limit that reduces Chinook salmon PSC in relatively high bycatch years, the Council also has considered the needs of these other user groups and has recommended measures to promote their access to the Chinook salmon resource. The RIR included a qualitative discussion of the benefits of a PSC limit to users of Chinook salmon (both consumptive and non-consumptive uses); therefore, the benefits have been described, albeit with some limitations due to the information that is available (see **ADDRESSES**). With the information that is currently available, neither the total ''cost'' of Chinook salmon PSC nor the total ''value'' of Chinook salmon savings can be estimated for the various user groups. The potential salmon savings that are estimated in the analysis do not translate directly into adult salmon that would otherwise have survived to return to spawning streams. Because of these and other data limitations, it is beyond the scope of the analysis to monetize or even quantify the benefits of this action, which is expected to reduce Chinook salmon PSC by, on average, 5,800 fish annually. However, the Council heard and considered testimony and was provided additional information by representatives of most groups that utilize the Chinook salmon resource demonstrating the breadth and variety of values associated with this species.

An analysis of the preferred alternative suggests that the imposition of PSC limits is likely to be constraining to the GOA pollock fisheries in some years, and consequently may result in impacts to the communities that depend on those fisheries. The preferred alternative that is implemented by this final rule balances the need to minimize Chinook salmon PSC consistent with National Standard 9, with the requirement to achieve optimum yield in the managed fishery, consistent with National Standard 1. The preferred alternative also reflects consideration of the requirements of National Standard 8—to minimize adverse impacts on fishing communities, consistent with the conservation requirements of the MSA. To this end, the final rule establishes PSC limits for the Western and Central GOA that could allow the pollock quota to be fully harvested in both areas, if the fleet can maintain the average long-term (17-year) Chinook salmon PSC rate, recognizing that in years of high PSC, if the fleet is unable to work together to come up with mechanisms to reduce Chinook salmon PSC, the PSC limit may result in an early closure to the fishery. One consequence of such a closure may be a benefit to fishing communities that depend on Chinook salmon. In approving the final rule, the Secretary minimizes the risk of adverse impacts to fishing communities, while adhering to her conservation obligations under National Standard 9.

Comment 5: Mid-year implementation is opposed and the Secretary should disapprove this part of the rule. The caps to be put in place for the C and D

seasons in 2012 will constrain the 2012 fall GOA pollock fisheries in the Central GOA.

Response: The Council recommended the PSC limits for the 2012 C and D seasons to be 8,929 Chinook salmon in the GOA Central Reporting Area and 5,598 Chinook salmon in the GOA Western Reporting Area. NMFS has determined that implementing these limits is consistent with the MSA and other applicable law.

These PSC limits were calculated by multiplying the annual PSC limit in each area by the average percentage of annual Chinook salmon PSC taken in the C and D seasons within each area, over the same time series of 2001 to 2010 but excluding 2007 and 2010, and adjusting upward by 25 percent. The Council adjusted the amount upward by 25 percent the first year to provide a buffer and reduce the constraint of mid-year implementation limits on the pollock fisheries. The Council recommended the 25 percent increase recognizing that pollock total allowable catch limits (TACs) may be higher in 2012 than they were in 2011. NMFS expects the upward adjustment of the PSC limits that will be implemented in 2012 will result in PSC limits that are not overly restrictive on the Central GOA pollock fishery. Nevertheless, the limits are intended to be constraining in years of high Chinook salmon PSC. If they are constraining, they are performing their intended function to prevent excessively high PSC. By the commenter's own analysis, full prosecution of the C season in the Central Gulf should be expected. If the fleet is able to achieve a modest reduction in its Chinook PSC rate compared to 2011, when there was no PSC limit in place, it may be able to avoid a closure before the TAC is reached in the D season as well.

Comment 6: There are numerous recent and upcoming Council and State actions that cumulatively may restrict the harvesters.

Response: Beyond the cumulative impact analyses in the EA for this action, the 2006 and 2007 harvest specifications EA, Groundfish Harvest Specifications Environmental Impact Statement, Allocation of Pacific Cod among Sectors in the Western and Central GOA EA, and the Central GOA Rockfish Program EA, no other additional past or present cumulative impact issues were identified. The combination of effects from the cumulative effects of past, present, and reasonably foreseeable future actions and this action are not likely to result in significant effects for any of the environmental components analyzed and are therefore not significant. Socioeconomic impacts are a direct result of the action of imposing PSC limits on the fisheries. These impacts are independent of the natural or physical effects of imposing PSC limits on the fisheries and are not expected to be significant. The environmental analyses listed are available at *http://alaskafisheries.noaa.gov.*

Comment 7: Due to inshore/offshore regulations, no pollock catcher/processors participate in the GOA pollock fisheries.

Response: NMFS acknowledges this comment. This final rule applies to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the GOA, including pollock catcher/processors if they were to participate in the GOA pollock fishery in the future.

Comment 8: The proposed rule states in the preamble that the only State of Alaska-managed pollock guideline harvest level fishery in those areas is the Prince William Sound (PWS) pollock fishery. If ''those areas'' refers to the Central and Western GOA, the PWS area (649) is considered part of the Eastern GOA, not the Central or Western GOA.

Response: NMFS acknowledges this comment, and agrees that the PWS area (649) is considered part of the Eastern GOA. ''Those areas'' referred to the entire GOA.

Comment 9: The proposed rule preamble stated paragraph (h)(2)(ii) would specify an annual limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA. ''Central'' should be ''Western.''

Response: NMFS agrees. This was an erroneous statement in the proposed rule preamble which was not reflected in the proposed regulatory text set forth in the proposed rule. The correct annual PSC limits of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA, and 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA, were stated in the proposed regulatory text and elsewhere throughout the preamble of the proposed rule.

Comment 10: The proposed rule needs clarification for regulatory text for observers on catcher/processors in a directed pollock fishery in the Central or Western reporting areas of the GOA. Catcher/processors do not participate in GOA directed pollock fisheries, so requiring catcher/processors less than 60 ft. to carry an observer for pollock directed fishing seems unnecessary and conflicting.

Response: NMFS acknowledges this comment. For reasons noted in the preamble, no observer requirements are included in this final rule.

Comment 11: Unlike the Bering Sea American Fisheries Act (AFA) fleet, the GOA pollock catcher vessels are subject to 30 percent observer coverage, not 100 percent coverage, so the PSC estimates will not be based entirely on observer census numbers for all deliveries. Given the high number of permutations of area/target/gear type and the 30 percent observed rate, a high Chinook salmon bycatch rate in one area/target/gear with poor observer coverage could result in underestimated or overestimated salmon numbers for the entire fleet in that area/target/gear fishery. The Bering Sea, with 100 percent observer coverage for distinct pollock trips (no mixing of catch species, which happens in the Central GOA) and mid-water fishery only, results in 100 percent census data to manage the hard caps for Chinook salmon PSC. For the GOA, the data will be more variable and less robust; this will challenge NMFS to accurately manage a hard cap for Chinook salmon PSC and will challenge the fleet to stay within the cap. A better approach could be to have PSC estimates derived from all pollock trips as one group by regulatory area instead of creating separate estimates across all the different possible permutations. Variability and precision may improve and this type of approach should be evaluated.

Response: NMFS acknowledges this comment. The current Catch Accounting System is described in Chapter 5 of the analysis for this action (see **ADDRESSES**). NMFS estimates of Chinook salmon are based on well-established sampling methodology implemented by the observer program and ratio estimators based on post stratification of catch. Changes to the estimation process are outside the scope of this rule.

Comment 12: The GOA pollock fishery is not the Bering Sea AFA pollock fishery. A hard cap with no tools or incentives for saving is a very blunt and antiquated management scheme.

Response: NMFS acknowledges this comment. This action sets PSC limits, but it does not restructure the management of the pollock fishery. The Council acknowledged that the selection of a Chinook salmon PSC limit for the GOA pollock fishery requires a balance of obligations under the MSA National Standards and the needs of different user groups. The Council intends for the Chinook salmon PSC limits to allow the full prosecution of the pollock fishery in

the Central and Western GOA in most years, while truncating the fishery in high bycatch years, to prevent events of relatively high Chinook salmon PSC in these areas, such as occurred in 2010 (44,813 Chinook salmon).

Classification

The Administrator, Alaska Region, NMFS determined that the FMP amendment is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the MSA and other applicable law. After considering the comments received on the amendment, the Secretary of Commerce approved Amendment 93 on February 17, 2012.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a Final Regulatory Flexibility Analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Executive Order 12866

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

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on December 14, 2011 (76 FR 77757), with comments invited through January 30, 2012. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Action

The Council developed a purpose and need statement defining the reasons for considering this action, as described in Section 1.1 and 3.3 of the analysis for this action (see **ADDRESSES**). The MSA National Standards require balancing optimum yield with minimizing bycatch and minimizing adverse impacts to fishery dependent communities. Chinook salmon bycatch taken incidentally in GOA pollock fisheries is a concern, historically accounting for the greatest proportion of Chinook salmon taken in GOA groundfish fisheries. Salmon bycatch control measures have not yet been implemented in the GOA, and 2010 Chinook salmon bycatch levels in the area were unacceptably high. Limited information on the origin of Chinook salmon in the GOA indicates that stocks of Asian, Alaska, British Columbia, and lower-48 origin are present, including Endangered Species Act-listed stocks.

The legal basis for this action is the MSA. Under the authority of the MSA, the Secretary of Commerce (NMFS Alaska Regional Office) and the Council have the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. NMFS is charged with carrying out the federal mandates of the Secretary of Commerce with regard to marine fish, including the publication of federal regulations. The Alaska Regional Office of NMFS and the Alaska Fisheries Science Center research, draft, and support the management actions recommended by the Council. The GOA groundfish fisheries are managed under the FMP. The action represents amendments to the FMP, as well as amendments to associated Federal regulations. Two principal objectives of the FMP amendment and regulations are to reduce Chinook salmon PSC in the Central and Western GOA pollock fisheries to the minimal level practicable, consistent with National Standard 9 of the MSA, and to enable pollock harvests to contribute to the achievement of optimum yield on a continuing basis in the GOA groundfish fishery, consistent with National Standard 1 of the MSA.

Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 93 on different sectors of the industry. For a summary of the comments received and the agency's responses, refer to the section above titled ''Response to Comments.''

Number and Description of Directly Regulated Small Entities

This final action directly regulates those federally-permitted or licensed entities that participate in harvesting groundfish from the Federal or State of Alaska-managed parallel pollock target fisheries of the Central or Western GOA. Fishing vessels are considered small entities if their total annual gross

receipts, from all their activities combined, are less than $4.0 million. The analysis identified 63 vessels in 2010 that would be affected by this action, 37 catcher vessels of which fished for pollock in the Central or Western GOA pollock fisheries and are members of a cooperative. These vessels are members of an AFA cooperative for Bering Sea pollock, a rockfish program cooperative in the GOA, a Bering Sea crab cooperative, or members of two or more of these cooperatives. The remaining 26 vessels are not part of a cooperative and are considered to be small entities.

Description of Significant Alternatives to the Final Action

During consideration of this action, the Council evaluated a number of alternatives to the preferred alternative, including (1) no action: (2) GOA-wide PSC limits of 15,000, 22,500, 25,000, and 30,000 Chinook salmon; (3) alternative ways of allocating the PSC limits between the Central and Western Reporting Areas; and (4) a 25-percent buffer for the PSC limit in one out of three consecutive years. The preferred alternative selected for Amendment 93 was a 25,000 fish limit, with 73 percent going to the Central GOA and 27 percent to the Western GOA. None of the other alternatives met the objectives of the action and had a smaller impact on small entities.

No action would have left the Chinook salmon PSC unlimited, which would have failed to meet the objective of the action. The 30,000 GOA-wide Chinook salmon PSC limit would likewise have failed to significantly control Chinook salmon PSC, and therefore failed to balance the benefits of the action to the Chinook salmon stocks and target fisheries for Chinook salmon with the needs of pollock trawlers in the way sought by the Council. A Chinook salmon PSC limit of 15,000 would have imposed a greater burden on small entities by constraining pollock fishing beyond the preferred alternative. The Chinook salmon PSC limit of 22,500 would be constraining in more years for the Central GOA compared to the recommended 25,000 PSC limit. The option for a 25-percent buffer to the PSC limits did not meet the intended objectives of reducing Chinook salmon PSC to the maximum extent practicable. Under the apportionment options, the Central GOA's proportion of the GOA-wide PSC limit ranges from 61 percent to 77 percent, or 9,122 Chinook salmon to 23,224 Chinook salmon, depending on the overall PSC limit. For the Western GOA, the range is from 23 percent to 39 percent, which results in a range of 3,388 Chinook salmon to 11,757 Chinook salmon. The apportionment options were based on the relative historical pollock catch in each regulatory area, the relative historical Chinook salmon catch amounts in each area, or a weighted ratio of the two. The Council determined lower percentages for either area were unnecessarily constraining to the pollock fisheries in the area while larger percentages for either area did not provide the incentive to minimize PSC to the extent practicable.

The changes to the PSD program regulations reduce reporting burden for applicants, streamline the application process considerations, and improve the description of eligible processors. No alternatives were identified for these regulatory amendments that would further reduce any potential impacts on small entities.

Collection-of-Information Requirements

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under Control Number 0648–0316.

Public reporting burden for the Application to become a NMFS Authorized Distributor in the PSD program is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

OMB Revisions to PRA References in 15 CFR 902.1(b).

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new section resulting from this final rule.

Tribal Consultation

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to E.O. 13175 which establishes several requirements for NMFS, including (1) to provide regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of Federal regulatory practices that significantly or uniquely affect their communities, (2) to reduce the imposition of unfunded mandates on Indian tribal governments, (3) and to streamline the applications process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires Federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met.

Tribal Summary Impact Statement

On December 14, 2011, NMFS consulted on this action by mailing letters to all Alaska tribal governments, Alaska Native corporations, and related organizations (''Alaska Native representatives'') by notifying them of the opportunity to comment when the Notice of Availability for Amendment

93 and the proposed rule were published in the **Federal Register**. The letter invited requests for further consultation on this action. One letter was received from the tribes in support of implementation of Amendment 93. The agency will implement Amendment 93 to establish PSC limits of salmon in the Central and Western GOA pollock fisheries. There were no concerns regarding the proposed action raised by tribal officials during this consultation process.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 17, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR chapter IX and 50 CFR chapter VI as follows:

Title 15—Commerce And Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR,'' add entry in alphanumeric order for ''679.21(h).'' The addition reads as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648-)
* * * * *	
50 CFR	.....
* * * * *	
679.21(h)	–0316
* * * * *	

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

■ 4. In § 679.7, add paragraph (b)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(8) *Prohibitions specific to salmon discard in the Central and Western Reporting Areas of the GOA directed fisheries for pollock.* Fail to comply with any requirement of § 679.21(h).

* * * * *

■ 5. In § 679.21:

■ a. Revise paragraphs (b)(2)(ii) and (b)(3); and

■ b. Add paragraph (h) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS and GOA pollock fisheries under paragraph (c) or (h) of this section, or any prohibited species catch as provided (in permits issued) under § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) and (h) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(h) *GOA Chinook Salmon PSC Management*—(1) *Applicability.* Regulations in this paragraph apply to vessels directed fishing for pollock with trawl gear in the Central and Western reporting areas of the GOA and processors taking deliveries from these vessels.

(2) *GOA Chinook salmon prohibited species catch (PSC) limits* (effective January 1, 2013).

(i) NMFS establishes an annual PSC limit of 18,316 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA.

(ii) NMFS establishes an annual PSC limit of 6,684 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(3) *Chinook salmon PSC limit for the GOA pollock fishery C and D seasons in 2012.* (Effective from August 25, 2012, until November 1, 2012). NMFS establishes the GOA Chinook salmon PSC limits for the Central and Western GOA pollock fisheries during the 2012 C and D seasons as follows:

(i) A PSC limit of 8,929 Chinook salmon for vessels engaged in directed fishing for pollock in the Central reporting area of the GOA; and

(ii) A PSC limit of 5,598 Chinook salmon for vessels engaged in directed fishing for pollock in the Western reporting area of the GOA.

(4) *Salmon retention.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD program at § 679.26, if the salmon were taken incidental to a Central or Western GOA directed pollock fishery, until an observer at the processing facility that takes delivery of the catch is provided the opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon.

(5) *Salmon discard.* Except for salmon under the PSD program at § 679.26, all salmon must be discarded, following notification by an observer that the number of salmon has been estimated and the collection of scientific data or biological samples has been completed.

(6) *Chinook salmon PSC closures in Pollock trawl gear fisheries.* If, during the fishing year, the Regional Administrator determines that vessels engaged in directed fishing for pollock in the Central reporting area or Western reporting area of the GOA will catch the applicable Chinook salmon PSC limit specified for that reporting area under paragraph (h)(2) of this section, NMFS will publish notification in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock.

6. In § 679.26, revise paragraphs (a)(2), (b)(1)(xi) introductory text, (b)(1)(xi)(C), (b)(2)(iv), and (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside

processors and stationary floating processors.

(b) * * *

(1) * * *

(xi) A list of all vessels and processors, and food bank networks or food bank distributors participating in the PSD program. The list of vessels and processors must include:

* * * * *

(C) The vessel's or processor's telephone number.

* * * * *

(2) * * *

(iv) The potential number of vessels and processors participating in the PSD program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program. A vessel or processor participating in the PSD program:

(i) In the BS pollock fishery must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28; and

(ii) In the Central or Western GOA pollock fishery must comply with applicable regulations at §§ 679.7(b), 679.21(h) and 679.28.

* * * * *

[FR Doc. 2012–17747 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 84 and 115

[Docket No. USCG–2012–0306]

RIN 1625–AB86

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments; Corrections

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** of Thursday, June 21, 2012 (77 FR 37305). The regulations related to technical, organizational and conforming amendments in Title 33 of the CFR. The Coast Guard discussed changes to Part 84 and Part 115 in the Preamble of the final rule that were not reflected in the regulatory text.

DATES: These amendments are effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rulemaking, please contact Mr. Leo Huott, CG–REG–2, U.S. Coast Guard, telephone 202–372–1027, email *Leo.S.Huott@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2012 (77 FR 37305), the Coast Guard published a final rule entitled ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments.'' Subsequent to the publication of that notice, the Coast Guard discovered that the changes discussed in the Preamble to 33 CFR 84.15 and 33 CFR 115.60 were not included in the regulatory text.

Need for Correction

As published, the final regulations do not capture two changes to Title 33 of the CFR and need to be corrected. In § 84.15, there is a formula for intensity of lights. This formula contains a legend describing the variables which includes an equals sign without a hard return for the definition. This formula instead should include a colon after each letter representation and a hard return following each colon. In § 115.60, the word ''construction'' is in the heading. The word ''construction'' should be removed because this section focuses on applications for permits to construct, modify, or replace bridges. Therefore, the word ''construction'' in the title does not accurately indicate the breadth of the regulation so the word needs to be removed.

List of Subjects

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 115

Administrative practice and procedure, Bridges, Reporting and recordkeeping requirements.

Accordingly, 33 CFR part 84 and part 115 are corrected by making the following correcting amendments:

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

■ 1. The authority citation for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 84.15(a) to read as follows:

§ 84.15 Intensity of lights.

(a) The minimum luminous intensity of lights will be calculated by using the formula:

$$I=3.43\times10^{6}\times T\times D^{2}\times K^{-D}$$

Where

I: Luminous intensity in candelas under service conditions,

T: Threshold factor 2×10^{-7} lux,

D: Range of visibility (luminous range) of the light in nautical miles,

K: Atmospheric transmissivity. For prescribed lights the value of K will be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

* * * * *

PART 115—BRIDGE LOCATIONS AND CLEARANCES; ADMINISTRATIVE PROCEDURES

■ 3. The authority citation for part 115 is revised to read as follows:

Authority: c. 425, sec. 9, 30 Stat. 1151 (33 U.S.C. 401); c. 1130, sec. 1, 34 Stat. 84 (33 U.S.C. 491); sec. 5, 28 Stat. 362, as amended (33 U.S.C. 499); sec. 11, 54 Stat. 501, as amended (33 U.S.C. 521); c. 753, Title V, sec. 502, 60 Stat. 847, as amended (33 U.S.C. 525); 86 Stat. 732 (33 U.S.C. 535); 14 U.S.C. 633.

■ 4. Revise the section heading in § 115.60 to read as follows:

§ 115.60 Procedures for handling applications for bridge permits.

* * * * *

Dated: July 16, 2012.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2012–17686 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0652]

Drawbridge Operation Regulation; Bayou Boeuf, Amelia, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Company swing span bridge across

Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana. The deviation is necessary to complete scheduled repairs necessitated by a bridge allision. This deviation allows the bridge to remain in the closed-to-navigation position for sixteen consecutive hours.

DATES: This deviation is effective from 7 a.m. through 11 p.m. on Thursday, August 16, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0652 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0652 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, 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 Jim Wetherington, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The BNSF Railway Company has requested a temporary deviation from the operating schedule of the swing span railroad bridge across Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana. The bridge provides no vertical clearance in the closed-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the vertical lift span of the bridge to remain in the closed-to-navigation position from 7 a.m. through 11 p.m. on Thursday, August 16, 2012.

The closure is necessary in order to change out a shaft and reducer gear damaged during a bridge allision earlier this year. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

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

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

Dated: July 10, 2012.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2012–17756 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0435]

RIN 1625–AA00

Safety Zone: Sea World San Diego Fireworks, Mission Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World San Diego Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective with actual notice from 8:50 p.m. on May 26, 2012, until July 20, 2012. This rule is effective in the **Federal Register** from July 20, 2012 until September 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0435. 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 Petty Officer David Varela, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssd@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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because such a publication would be impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM would be impracticable, since immediate action is needed to ensure the public's safety.

B. Basis and Purpose

Sea World is sponsoring the Sea World Fireworks, which will include a fireworks presentation from a barge in Mission Bay. The fireworks display is scheduled to occur between 8:50 p.m. and 10 p.m. on most evenings between May 26, 2012 and September 3, 2012. This safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:50 p.m. to 10 p.m. on the following evenings: May 26 to May 28, June 2 and 3, June 9 and 10, June 14 through August 19, August 24 through August 26, and September 1 through September 3. The safety zone will cover a 600 foot

radius surrounding the fireworks barge in approximate position 32°46′03″ N, 117°13′11″ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. When this safety zone is being enforced, persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Mission Bay from 8:50 p.m. to 10 p.m. from May 26, 2012 through September 3, 2012.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and 10 minutes late in the evening when vessel traffic is low.

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 establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–495 to read as follows:

§ 165.T11–495 Safety Zone; Sea World San Diego Fireworks, Mission Bay; San Diego, CA.

(a) *Location.* The safety zone will include the area within 600 feet of the fireworks barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This safety zone will be enforced from 8:50 p.m. to 10 p.m. on the following evenings: May 26 to May 28, June 2 and 3, June 9 and 10, June 14 through August 19, August 24 through August 26, and September 1 through September 3.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with general regulations in 33 CFR part 165, subpart C, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 24, 2012.

J.A. Janszen,

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

[FR Doc. 2012–17694 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0617]

RIN 1625–AA00

Safety Zone; Can-Am Festival Fireworks, Black River Bay, Sackets Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Black River Bay, Sackets Harbor, NY. This safety zone is intended to restrict vessels from a portion of Black River Bay during the Can-Am Festival Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:15 p.m. until 10:45 p.m. on July 21, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0617]. 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.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@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

A. Regulatory History and Information

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

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

B. Basis and Purpose

Between 9:45 p.m. and 10:15 p.m. on July 21, 2012, a fireworks display will be held on Black River Bay near Sackets

Harbor, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Can-Am Festival Fireworks. This zone will be effective and enforced from 9:15 p.m. until 10:45 p.m. on July 21, 2012. This zone will encompass all waters of Black River Bay, Sackets Harbor, NY within a 1120 foot radius of position 43°57′15.94″ N and 76°06′39.20″ W (NAD 83).

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

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Black River Bay on the evening of July 21, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local 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** section above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER 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 safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0617 to read as follows:

§ 165.T09–0617 Safety Zone; Can-Am Festival Fireworks, Black River Bay, Sackets Harbor, NY.

(a) Location. The safety zone will encompass all waters of Black River Bay, Sackets Harbor, NY within a 1120 foot radius of position 43°57′15.94″ N and 76°06′39.20″ W (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective and will be enforced on July 21, 2012 from 9:15 p.m. until 10:45 p.m.

(c) *Regulations.*

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 10, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–17765 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0608]

RIN 1625–AA00

Safety Zone; City of Ogdensburg Fireworks, St. Lawrence River, Ogdensburg, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Lawrence River, Ogdensburg, NY. This safety zone is intended to restrict vessels from a portion of the St. Lawrence River during the City of Ogdensburg Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:30 p.m. until 11:00 p.m. on July 27, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0608]. 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.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment

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

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

B. Basis and Purpose

Between 10:00 p.m. and 10:30 p.m. on July 27, 2012, a fireworks display will be held on the St. Lawrence River near Ogdensburg, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the City of Ogdensburg Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11:00 p.m. on July 27, 2012. This zone will encompass all waters of the St. Lawrence River, Ogdensburg, NY within an 840 foot radius of position 44°42′02.79″ N and 75°29′42.73″ W (NAD 83).

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

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the St. Lawrence River on the evening of July 27, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local 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** section above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0608 to read as follows:

§ 165.T09–0608 Safety Zone; City of Ogdensburg Fireworks, St. Lawrence River, Ogdensburg, NY.

(a) *Location.* The safety zone will encompass all waters of the St. Lawrence River, Ogdensburg, NY within an 840 foot radius of position 44°42′02.79″ N and 75°29′42.73″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 27, 2012 from 9:30 p.m. until 11:00 p.m.

(c) *Regulations.*

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 9, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–17766 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0609]

RIN 1625–AA00

Safety Zone; Canal Fest of the Tonawandas, Erie Canal, Tonawanda, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Erie Canal, Tonawanda, NY. This safety zone is intended to restrict vessels from a portion of the Erie Canal during the Canal Fest of the Tonawandas Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:00 p.m. until 10:30 p.m. on July 22, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0609]. 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.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@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

A. Regulatory History and Information

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

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

B. Basis and Purpose

Between 9:30 p.m. and 10:00 p.m. on July 22, 2012, a fireworks display will be held on the Erie Canal near Tonawanda, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Canal Fest of the Tonawandas Fireworks. This zone will be effective and enforced from 9:00 p.m. until 10:30 p.m. on July 22, 2012. This zone will encompass all waters of the Erie Canal, Tonawanda, NY within a 210 foot radius of position 43°01′17.84″ N and 78°52′40.97″ W (NAD 83).

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

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Erie Canal on the evening of July 22, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local 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** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER 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 safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0609 to read as follows:

§ 165.T09–0609 Safety Zone; Canal Fest of the Tonawandas, Erie Canal, Tonawanda, NY.

(a) *Location.* This zone will encompass all waters of the Erie Canal, Tonawanda, NY within a 210 foot radius of position 43°01′17.84″ N and 78°52′40.97″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 22, 2012 from 9:00 p.m. until 10:30 p.m.

(c) *Regulations.*

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 9, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–17761 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0490]

RIN 1625–AA00

Safety Zone: San Diego Symphony POPS Fireworks; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of San Diego Bay in support of the San Diego Symphony POPS Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective with actual notice from 9:00 p.m. on June 23, 2012, until July 20, 2012. This rule is effective in the **Federal Register** from July 20, 2012 until 10:00 p.m. on September 2, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0490. 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 Petty Officer David Varela, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssd@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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because publishing an NPRM would be impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Publication of an NPRM would be impracticable, since immediate action is needed to ensure the public's safety.

B. Basis and Purpose

The San Diego Symphony Orchestra and Copley Symphony Hall are sponsoring the San Diego POPS Fireworks, which will include a fireworks presentation conducted from a barge in San Diego Bay. The barge will be located near the navigational channel in the vicinity of North Embarcadero. The safety zone will include the area within 400 feet of the firing barge. The sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone. This safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 9 p.m. to 10 p.m. on the following evenings: June 23, 29 and 30, July 1, 6 and 7, 13 and 14, 20 and 21, 27 and 28, August 3 and 4, 10 and 11, 17 and 18, 24 and 25, 31, and September 1 and 2. The safety zone will include the area within 400 feet of the fireworks barge in approximate position 32°42.13′ N, 117°10.01′ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. When this safety zone is being enforced, persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of San Diego Bay from 9 p.m. to 10 p.m. from June 23 through September 2, 2012.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone impacts a relatively small area, and will only be in enforced for one hour at a time, late in the evening when vessel traffic is low.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–497 to read as follows:

§ 165.T11–497 Safety Zone; San Diego Symphony POPS Fireworks; San Diego, California.

(a) *Location.* The safety zone will include the area within 400 feet of the fireworks barge in approximate position 32°42.13′ N, 117°10.01′ W.

(b) *Enforcement Period.* This safety zone will be enforced from 9 p.m. to 10 p.m. on the following evenings; June 23, 29, and 30, July 1, 6 and 7, 13 and 14, 20 and 21, 27 and 28, August 3 and 4, 10 and 11, 17 and 18, 24 and 25, 31, and September 1 and 2, 2012.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessels that have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with general regulations in 33 CFR part 165, subpart C, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 13, 2012.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2012–17709 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0497]

RIN 1625–AA00

Safety Zone: Sea World San Diego Fireworks, Mission Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:00 p.m. to 9:45 p.m. on September 2, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0497. 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 Petty Officer David Varela, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssd@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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because publication of an NPRM would be impracticable. Immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of an NPRM would be impracticable, since immediate action is needed to ensure the public's safety.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River in support of a fireworks show in the navigation channel of the Lower Colorado River, Laughlin, NV. The fireworks show is being sponsored by AVI Resort and Casino. The temporary safety zone will include all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino. The temporary safety zone is necessary to provide for the safety of the show's crew, spectators, and participants of the event, participating vessels, and other vessels and users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 9:45 p.m. on September 2, 2012. The limits of the safety zone include all navigable waters within 800 feet of the firing location. The firing location will be on land, centered across from the AVI Resort and Casino Cove in approximate position: 35°00′55″ N, 114°38′12″ W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Vessels or persons violating this rule may be subject to both criminal and civil penalties.

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. This determination is based on the size, and location, and duration of the safety zone. The zone encompasses an area that is only about a quarter mile in diameter, and is located in an area that will not impact commercial vessels. Additionally, the zone will only be in effect for one hour and 45 minutes, late at night when vessel traffic is low.

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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 9:45 p.m. on September 2, 2012.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone is very small, and will only be in effect for one hour and 45 minutes late in the evening when vessel traffic is low.

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 establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–499 to read as follows:

§ 165.T11–499 Safety Zone; AVI Labor Day Fireworks, Colorado River; Laughlin, NV.

(a) *Location.* The limits of the safety zone include all navigable waters within 800 feet of the firing location. The firing location will be on land, centered across

from the AVI Resort and Casino Cove in approximate position: 35°00′55″ N, 114°38′12″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on September 2, 2012. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 13, 2012.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2012–17705 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Disestablishment of Restricted Area, Rhode Island Sound, Atlantic Ocean, Approximately 4 Nautical Miles Due South of Lands End in Newport, RI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Navy (USN) requested that the U.S. Army Corps of Engineers (Corps) disestablish the restricted area (RA) located 4 nautical miles due south of Lands End in Newport, Rhode Island. The RA was established on August 31, 1987. The purpose of the RA was to establish a practice minefield for conducting mine detection and mine sweeping exercises. Use of the RA by the USN has been discontinued. Given the inert practice materials that were used at the site, the USN has determined that disestablishment of the area will not pose any hazard or threat to public safety.

DATES: *Effective date:* August 20, 2012.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by email at *david.b.olson@usace.army.mil* or Ms. Angela C. Repella, U.S. Army Corps of Engineers, New England District, Regulatory Branch, at 978–318–8639 or by email at *Angela.C.Repella@usace.army.mil.*

SUPPLEMENTARY INFORMATION: By letter received May 5, 2011, the commanding officer of Naval Station Newport, requested the removal of the restricted area located 4 nautical miles due south of Lands End in Newport, Rhode Island. The RA is no longer needed by the USN. In response to this request, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334 by disestablishing the RA.

The proposed rule was published in the April 4, 2012, edition of the **Federal Register** (77 FR 20330), with regulations.gov docket number COE–2012–0001. In April 2012, the Corps New England District issued a public notice soliciting comments on the proposal to all known interested parties. No comments were received in response to the proposed rule and the public notice.

Administrative Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the disestablishment of the RA would not have a significant economic impact on small entities. For more detailed analysis of potential impacts of this rule, please see the regulatory analysis in the EA.

c. *Review Under the National Environmental Policy Act.* We have concluded that the disestablishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment and Finding of No Significant Impact have been prepared and may be reviewed at the New England District Office. Please contact Ms. Angela C. Repella at the phone number specified above for further information.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

§ 334.78 [Removed]

■ 2. Remove § 334.78.

Dated: July 16, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–17779 Filed 7–19–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Meloy Channel, U.S. Coast Guard Base Miami Beach, FL; Restricted Area

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending the regulations at 33 CFR part 334 to establish a new restricted area in the waters surrounding the U.S. Coast Guard Base Miami Beach, Florida (Base Miami Beach). Base Miami Beach is composed of multiple U.S. Coast Guard (USCG) units, both land and waterside. The facility has one of the highest operational tempos in the USCG for both routine and emergency operations. The amendment to the regulations is necessary to enhance the USCG's ability to secure their shoreline to counter postulated threats against their personnel, equipment, cutters, and facilities by providing stand-off corridors encompassing the waters immediately contiguous to Base Miami Beach. The amendment will also serve to protect the general public from injury or property damage during routine and emergency USCG operations and provide an explosive safety arc buffer during periodic transfer of ammunitions between units, including cutters.

DATES: *Effective date:* August 20, 2012.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904–232–1680.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulation at 33 CFR part 334 by establishing a new restricted area in the waters near Meloy Channel, Government Cut Channel, and Miami Main Channel surrounding Base Miami Beach. The amendment to the regulation is described below.

The proposed rule was published in the May 3, 2012, issue of the **Federal Register** (77 FR 26229), and its regulations.gov docket number is COE–2012–0009. No comments were received in response to the proposed rule.

The amendment to this regulation will allow the Commander, U.S. Coast Guard Base Miami Beach to restrict passage of persons, watercraft, and vessels in waters contiguous to this Command, thereby increasing the ability to protect the facilities and personnel at Base Miami Beach from potential threats. The amendment will also provide a measure of protection to the public by reducing the potential for injury or property damage during routine and emergency USCG operations at the facilities and by providing a permanent explosive safety arc during the transfer of ammunition between cutters.

Procedural Requirements

a. *Review Under Executive Order 12866.* This regulation is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The regulation has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* This regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This regulation does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this regulation.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps is amending 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.605 to read as follows:

§ 334.605 Meloy Channel, U.S. Coast Guard Base Miami Beach, Florida; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329, within the area bounded by a line connecting the following coordinates: Commencing from the shoreline at latitude 25°46′20.07″ N, longitude 080°08′50.94″ W; thence to latitude 25°46′22.69″ N, longitude 080°08′44.01″ W; thence to latitude 25°46′22.02″ N, longitude 080°08′42.14″ W; thence to latitude 25°46′12.23″ N, longitude 080°08′35.33″ W; thence to latitude 25°46′ 09.13″ N, longitude 080°08′40.74″ W; thence to latitude 25°46′11.63″ N, longitude 080°08′43.36″ W; thence to latitude 25°46′17.22″ N, longitude 080°08′47.17″ W; thence to latitude 25°46′17.15″ N, longitude 080°08′47.62″ W; thence to latitude 25°46′17.63″ N, longitude 080°08′49.33″ W; thence to latitude 25°46′18.91″ N, longitude 080°08′50.24″ W; thence proceed directly to a point on the shoreline at latitude 25°46′18.76″ N, longitude 080°08′50.71″ W thence following the mean high water line to the point of beginning.

(b) *The regulations.* (1) The restricted area described in paragraph (a) of this section is only open to U.S. Government vessels. U.S. Government vessels include, but are not limited to, U.S. Coast Guard and Coast Guard Auxiliary vessels, Department of Defense vessels, state and local law enforcement and emergency services vessels, and vessels under contract with the U.S. Government. Warning signs notifying individuals of the restricted area boundary and prohibiting all unauthorized entry into the area will be posted along the property boundary and, as appropriate, on the piers of the MacArthur Causeway Bridge adjacent to the restricted area.

(2) All persons, vessels, and other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area described in paragraph (a) of this section without prior approval from the Base Commander, U.S. Coast Guard Base Miami Beach or his/her designated representative.

(3) Fishing, trawling, net-fishing, and other aquatic activities are prohibited in the restricted area without prior approval from the Base Commander, U.S. Coast Guard Base Miami Beach or his/her designated representative.

(4) The restrictions described in paragraph (b) of this section are in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Base Commander, U.S. Coast Guard Base Miami Beach and/or such persons or agencies as he/she may designate.

Dated: July 16, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–17771 Filed 7–19–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, SUPSHIP Gulf Coast Detachment Mobile at AUSTAL, USA, Mobile, AL; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending an existing restricted area to reflect changes in responsible parties for the restricted area established around the AUSTAL, USA shipbuilding facility located in Mobile, Alabama. The Supervisor of Shipbuilding, Conversion and Repair, United States Navy (USN), Gulf Coast (SUPSHIP Gulf Coast) assumed the duties of administering new construction contracts at AUSTAL USA in Mobile, AL, on October 9, 2011, replacing the Supervisor of Shipbuilding, Conversion, and Repair, USN, Bath (SUPSHIP Bath). The Department of the Navy requested an amendment to the regulation to reflect the change in responsible parties. There are no other changes for this restricted area regulation.

DATES: *Effective date:* August 20, 2012.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (David Olson), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Mr. Donald E. Mroczko, U.S. Army Corps of Engineers, Mobile District, at 251–690–3185.

SUPPLEMENTARY INFORMATION: The Supervisor of Shipbuilding, Conversion and Repair (SUPERVISOR), USN, Gulf Coast (SUPSHIP Gulf Coast) assumed the duties of administering new construction contracts at AUSTAL USA in Mobile, AL, on October 9, 2011, replacing the Supervisor of Shipbuilding, Conversion, and Repair, USN, Bath (SUPSHIP Bath). The SUPERVISOR is responsible for United States Navy shipbuilding activities at AUSTAL, USA located in Mobile, Alabama. In accordance with Department of Defense and Department of the Navy guidance, the SUPERVISOR is responsible for the antiterrorism efforts and force protection of Department of the Navy assets under his or her charge. As such, the restricted area was established on September 22, 2009 (see 74 FR 48151). There are no changes to the limits of the restricted area.

The proposed rule was published in the December 2, 2011, edition of the **Federal Register** (76 FR 75508) and the regulations.gov docket number was COE–2011–0034. In response to the proposal, one comment was received. The commenter stated that the proposed rule will have no effect on historic properties.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending 33 CFR 334.782 by changing the responsible party from SUPSHIP Bath to SUPSHIP Gulf Coast.

Administrative Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* The rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the restricted area amendment will have practically no economic impact on the public, no anticipated navigational hazard, and no interference with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 226 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise the section heading and paragraphs (b) and (c) of § 334.782 to read as follows:

§ 334.782 SUPSHIP Gulf Coast, Pascagoula, Mississippi, Detachment Mobile, Alabama at AUSTAL, USA, Mobile, Alabama; restricted area.

* * * * *

(b) *The regulations.* (1) All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the U.S. Coast Guard and local or State law enforcement vessels are prohibited from entering the restricted area without permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulf Coast, Pascagoula, Mississippi or his/her authorized representative.

(2) The restricted area is in effect twenty four hours per day and seven days a week.

(3) Should warranted access into the restricted navigation area be needed, all entities are to contact the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulf Coast, Pascagoula, Mississippi, or his/her authorized representative on Marine Communication Channel 16.

(c) *Enforcement.* The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, USN, Gulf Coast, Pascagoula, Mississippi, and/or such agencies or persons as he/she may designate.

Dated: July 16, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–17780 Filed 7–19–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0458; FRL–9354–8]

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of trifloxystrobin in or on artichoke, globe. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 20, 2012. Objections and requests for hearings must be received on or before September 18, 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–2011–0458, is available either electronically through *http://www.regulations.gov* or in hard copy 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: Dominic Schuler, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0260; email address: *schuler.dominic@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–2011–0458 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 18, 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–2011–0458, 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 April 4, 2012 (77 FR 20334) (FRL–9340–4), 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 1F7845) by Bayer CropScience, 2 TW Alexander Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.555 be amended by establishing tolerances for residues of the fungicide trifloxystrobin, [benzeneacetic acid, (E,E)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl)phenyl]ethylidene] amino]oxy]methyl]-methyl ester], in or on artichoke, globe at 1.0 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

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 trifloxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifloxystrobin 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.

Trifloxystrobin exhibits very low toxicity following single oral, dermal and inhalation exposures. It is a strong dermal sensitizer. In repeated dose tests in rats, the liver is the target organ for trifloxystrobin; toxicity is induced following oral and dermal exposure for 28 days. There is no evidence of increased susceptibility following prenatal exposure to rats and rabbits and postnatal exposures to rats. Trifloxystrobin was determined not to be carcinogenic in mice or rats following long-term dietary administration. Trifloxystrobin is positive for mutagenicity in Chinese Hamster V79 cells, albeit at cytotoxic dose levels. However, trifloxystrobin is negative in the remaining mutagenicity studies. Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 11, 2010 (75 FR 33190) (FRL–8829–2), and at *http://www.regulations.gov* in the document ''Trifloxystrobin. Human Health Risk Assessment for a Section 3 Petition Proposing Increased Tolerances for Residues in/on Field, Sweet and Pop Corn,'' pp. 17–21 in docket ID number EPA–HQ–OPP–2009–0278.

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 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 trifloxystrobin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 11, 2010.

C. Exposure Assessment

1. Dietary exposure from food and feed uses. In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin 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 trifloxystrobin. In estimating acute dietary exposure for females 13–49 years old, EPA conducted an analysis using the Dietary Exposure Evaluation Model (DEEM\TM\ 7.81), which 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. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

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 for all commodities with the exception of apples, oranges and grapes. For these commodities EPA used anticipated residues from field residue trials. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

iii. Cancer. Based on the data summarized in Unit III.A., EPA has concluded that trifloxystrobin 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 percent crop treated (PCT) information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. Dietary exposure from drinking water. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifloxystrobin. 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.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of trifloxystrobin plus its major degradation product, CGA–321113 for the proposed artichoke, globe use are estimated to be 47.98 parts per billion (ppb) and 47.31 ppb for surface water for acute and chronic exposures, respectively. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

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).

Trifloxystrobin is currently registered for the following uses that could result in residential exposures: Ornamentals and turfgrass. EPA assessed residential exposure under the following exposure scenarios: Adult post-application dermal exposure; and children's post-application dermal and/or hand to mouth exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.*

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 trifloxystrobin to share a common mechanism of toxicity with any other substances, and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that trifloxystrobin 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 no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the prenatal developmental study in rats, there was no developmental toxicity at the limit dose. In the prenatal developmental study in rabbits, developmental toxicity was seen at a dose that was higher than the dose that caused maternal toxicity. In the 2-generation reproduction study, there was no offspring toxicity at the highest dose tested.

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. That decision is based on the following findings:

i. The database is complete except for an immunotoxicity study and an inhalation study. Although an immunotoxicity study is needed, the entire trifloxystrobin toxicity database was examined and there was no indication that this chemical directly targets the immune system. EPA does not believe that conducting an immunotoxicity study will result in a dose less than the points of departure already used in this risk assessment and an additional database uncertainty factor (UF) for potential immunotoxicity does not need to be applied. Regarding the requirement for an inhalation toxicity study, the Agency has increased its focus on the uncertainties associated with route-to-route extrapolation (i.e., the use of oral toxicity studies for inhalation risk assessment) and is presently requiring inhalation toxicity studies more frequently. Although an inhalation toxicity study is now required for trifloxystrobin based on OPP's current weight of the evidence (WOE) approach, residential inhalation exposure is not anticipated; therefore, there are no uncertainties with respect to residential inhalation exposures to trifloxystrobin and no need to retain an additional database uncertainty factor for this safety finding.

ii. There is no indication that trifloxystrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. A waiver for a subchronic neurotoxicity study has been granted. There is no evidence of neurotoxicity in subchronic and chronic toxicity studies (rats, dogs, mice), in developmental toxicity studies (rats, rabbits), or in a reproductive toxicity study (rats). There is no concern for neurotoxicity for trifloxystrobin based on the available database, limited findings in an acute neurotoxicity study, and lack of neurotoxicity in other fungicides of the strobilurin class.

iii. There is no evidence that trifloxystrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary exposure assessment was unrefined, and the chronic dietary exposure assessment was partially refined, assuming 100 PCT and tolerance-level residues for all commodities except for apples, grapes, and oranges where the average field trial residues were used. By using these screening-level assessments with minor refinement, actual exposures/risks from residues in food will not be underestimated. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to trifloxystrobin 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 trifloxystrobin.

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 trifloxystrobin will occupy 1.9% 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 trifloxystrobin from food and water will utilize 64% 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 trifloxystrobin 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).

Trifloxystrobin 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 trifloxystrobin. 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 aggregate MOEs of 1,100 for adults (dermal residential + dietary food and drinking water exposures); 650 for children 1–2 years (dermal residential + dietary food and drinking water exposures); and 130 for children 1–2 years (incidental oral residential + dietary food and drinking water exposures). Because EPA's level of concern for trifloxystrobin is a MOE of 100 or less, these MOEs 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). Trifloxystrobin is not expected to pose an intermediate-term risk based on a short soil half-life (approximately 2 days).

5. Aggregate cancer risk for U.S. population. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, chemical name 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 trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen phosphorus detection (GC/NPD), Method AG–659A and liquid chromatography with tandem mass spectrometry detection (LC/MS/MS), Method No. 200177) is available to enforce the tolerance expression.

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.

The Codex has not established a MRL for trifloxystrobin on artichoke, globe. Therefore, international harmonization is not an issue.

V. Conclusion

Therefore, a tolerance is established for residues of trifloxystrobin, [benzeneacetic acid, (E,E)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl)phenyl]ethylidene] amino]oxy]methyl]-methyl ester], in or on artichoke, globe at 1.0 ppm.

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 11, 2012.

Lois Rossi,

Director, Registration Division, Office of 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 180.555 is amended by alphabetically adding ''Artichoke, globe'' to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe	1.0
* * * * *	

* * * * *

[FR Doc. 2012–17630 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 156

[CMS–9965–F]

RIN 0938–AR36

Patient Protection and Affordable Care Act; Data Collection To Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule establishes data collection standards necessary to implement aspects of section 1302 of the Patient Protection and Affordable Care Act (Affordable Care Act), which directs the Secretary of Health and Human Services to define essential health benefits. This final rule outlines the data on applicable plans to be collected from certain issuers to support the definition of essential health benefits. This final rule also establishes a process for the recognition of accrediting entities for purposes of certification of qualified health plans.

DATES: *Effective Date:* These regulations are effective on August 20, 2012.

FOR FURTHER INFORMATION CONTACT:

Adam Block at (410) 786–1698, for matters related to essential health benefits data collection.

Deborah Greene at (301) 492–4293, for matters related to accreditation of qualified health plans.

SUPPLEMENTARY INFORMATION:

Executive Summary

Beginning in 2014, all non-grandfathered health plans in the individual and small group market, and other plans will cover the essential health benefits (EHB), as defined by the Secretary of Health and Human Services (the Secretary). The Affordable Care Act directs that the EHB reflect the scope of benefits covered by a typical employer plan and cover at least the following 10 general categories of items and services: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. EHB will promote predictability for consumers who purchase coverage in these markets, facilitate comparison across health plans, and ensure that individual and small group subscribers have the same access to the same scope of benefits provided under a typical employer plan.

This final rule includes data reporting standards for health plans that represent potential State-specific benchmark plans. Specifically, the final rule establishes that issuers of the largest three small group market products in each state report information on covered benefits.

In addition, this rule establishes the first phase of a two-phased approach for recognizing accrediting entities to implement the standards established under the Affordable Care Act for qualified health plans (QHPs) to be accredited on the basis of local performance by an accrediting entity recognized by the Secretary on a timeline established by the Exchange and addresses some data sharing and performance requirements of the recognized accrediting entities. In phase one, the National Committee for Quality Assurance (NCQA) and URAC are recognized as accrediting entities on an interim basis. In phase two, a criteria-based review process will be adopted through future rulemaking.

I. Background

Section 2707 of the Public Health Service Act, as added by section 1201 of the Affordable Care Act, directs that, for plan years beginning on or after January 1, 2014, health insurance issuers offering non-grandfathered plans in the individual or small group market ensure such coverage includes EHB as described in section 1302(a) of the Affordable Care Act. Section 1302 of the Affordable Care Act provides for the establishment of EHB, to be defined by the Secretary. The law also directs that EHB reflect the scope of benefits covered by a typical employer plan and cover at least the 10 general categories of items and services previously listed. Section 1302(b)(4) of the Affordable Care Act further establishes that the Secretary define EHB such that it:

- Sets an appropriate balance among the 10 general categories;
- Does not discriminate based on age, disability, or expected length of life;
- Takes into account the health care needs of diverse segments of the population; and
- Does not allow denials of essential benefits based on age, life expectancy, disability, or degree of medical dependency and quality of life.

Section 1302(b)(4) of the Affordable Care Act further directs the Secretary to

consider the provision of emergency services and dental benefits when determining whether a particular health plan covers the EHB. Finally, sections 1302(b)(4)(G) and (H) of the Affordable Care Act direct the Secretary to periodically review the EHB, report the findings of the review to the Congress and to the public, and update the EHB as needed. A bulletin on HHS's intended benchmark approach to defining essential health benefits was made available for comment on December 16, 2011 (EHB Bulletin).[1]

Section 1311(c)(1)(D)(i) of the Affordable Care Act provides that in order to be certified as a QHP and operate in an Exchange, a health plan must be accredited by a recognized accrediting entity on a uniform timeline established by the applicable Exchange. In a separate rule titled ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers'' (Exchange Rule) published in the March 27, 2012 **Federal Register** (77 FR 18310), HHS finalized 45 CFR 156.275, specifying that a QHP issuer must be accredited by an entity recognized by HHS.

II. Provisions of the Proposed Regulation and Analysis and Responses to Public Comments

The Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans proposed rule was published in the **Federal Register** on June 5, 2012 and the comment period closed on July 5, 2012 (77 FR 33133). In total, we received 80 public comments on the proposed regulation.

We received numerous comments on the EHB data collection portion of the proposed rule. Commenters represented a variety of stakeholders, including issuers, states, consumer groups, and others interested parties. We received a number of comments in support of the proposed data collection, including the required submission of data on treatment limitations, prescription drug coverage, and other descriptive information for small group plans.

Commenters also recommended specific uses of the data we proposed to collect, for example that consumers and states have access to the data. Several commenters urged HHS to use the data for specific purposes, such as to ensure that certain services are covered, that plans are not discriminatory, that prescription drug coverage is comparable to a typical employer plan and that benefit limits do not reduce actuarial value (AV). We note that the purpose of the data collection in this final rule is to collect benefit and coverage information from potential benchmark plans. Accordingly, we addressed comments on potential uses of the data collected to the extent that they are related to the development of benchmark plans.

We received a number of comments that fall outside of the scope of this regulation, which is specific to data collection from certain issuers to support the definition of essential health benefits. Because we intend to publish additional rules on EHB standards in the future, we do not specifically address these comments in this final rule.

We also received numerous comments on the proposed rule regarding recognition of accrediting entities. Commenters represented a diverse set of stakeholders including but not limited to accrediting entities, healthcare provider organizations, consumer groups, health plans, industry experts, and members of the public. The vast majority of commenters supported the recognition of NCQA and URAC for the accreditation of QHPs in the interim phase one and agreed with the proposed provisions that we outlined in the NPRM. We received a number of comments on the timeline, financial and operational requirements for accreditation, the Federally Facilitated Exchange (FFE), the broader quality requirements in the Affordable Care Act, network adequacy and access standards for QHPs, coordination of quality requirements inside and outside Exchanges, and Exchange requirements. We have not addressed such comments and others that are outside the scope of this final rule. HHS will be releasing future rulemaking and guidance on these other topics. Several commenters requested clarifications regarding the future recognition process for accrediting entities, clinical quality measures criteria, accreditation standards related to network adequacy and access, documentation and data sharing requirements. In this final rule, we have responded to comments submitted in response to the recognition of entities for the accreditation of QHPs within the scope of the proposal and this final rule.

A. Collection of Essential Health Benefits Data (§ 156.120)

1. Definitions

Under § 156.120(a), we proposed definitions for terms that are used throughout the section. For the most part, the definitions presented in § 156.120(a) were taken from existing regulations.

We proposed to define ''health benefits'' as ''benefits for medical care, as defined at § 144.103 of this chapter, that may be delivered through the purchase of insurance or otherwise.'' This proposed definition is adapted from the definition of health benefits finalized in the Early Retiree Reinsurance Program regulation at 45 CFR 149.2.

We proposed that for the purposes of this data collection ''health plan'' has the meaning given to the term ''portal plan'' in § 159.110 of this chapter, which is the discrete pairing of a package of benefits and a particular cost sharing option (not including premium rates or premium quotes). We note that a ''portal plan'' is collected as a unique combination of benefits, which may include optional benefits available for an additional premium (often referred to as ''riders'') as well as benefits that are legally considered riders but are not optional for consumers (''mandatory riders''), if those benefits are part of the most commonly purchased set of benefits within the product by enrollment.

We proposed that ''health insurance product'' has the meaning given to the term at § 159.110 of this chapter, which is a package of benefits that an issuer offers that is reported to state regulators in an insurance filing. We proposed that ''small group market'' has the meaning given to the term in § 155.20 of this chapter, which is the meaning in section 1304(a)(3) of the Affordable Care Act. We also proposed that ''State'' has the meaning given at § 155.20. We noted that the Public Health Service Act definition of ''State'' that would apply to section 2707(a) is broader than the definition in section 1304 of the Affordable Care Act.

We proposed that ''treatment limitations'' have the meaning found in § 146.136 of this chapter, which includes both quantitative and nonquantitative limits on benefits. Examples of quantitative limits include limits based on the frequency of treatment, days of coverage, or other similar limits on the scope and duration of treatment. Examples of nonquantitative limits include prior authorization and step therapy requirements. In response to comments

[1] Available at: *http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf.*

received on this proposal, we are changing the definition of ''treatment limitations'' for the purpose of this final rule to include only quantitative limits.

Additionally, throughout the proposed rule we referred to ''issuers,'' which is defined in previous rulemaking at 45 CFR 156.20.

Comment: We received several comments on the treatment of riders, or optional benefits available for an additional premium, under proposed § 156.120. Commenters requested that HHS clarify the treatment of riders with respect to EHB; specifically some commenters recommended that HHS collect information on riders made available as part of a plan and stated that benefits offered through riders be considered part of EHB. Another commenter expressed concern that the definition of ''health insurance product'' included in the final rule could make it difficult for issuers and states to identify the largest plan within that product as a benchmark option.

Response: In response to these comments, we now use the term portal plan defined in § 159.110 for this identification in the final rule, which as described above may include riders. The issuers subject to this reporting requirement will submit the requested benefit data on the largest plan by enrollment within that product. By using the ''portal plan'' definition for this data collection, the largest plan by enrollment will be comprised of the most commonly purchased unique set of benefits, which may include riders.

2. Required Information (§ 156.120(b))

In § 156.120(b), we proposed that certain issuers of applicable plans described in paragraph (c) of this section submit certain benefit and enrollment information to HHS. We stated that this information could be used by HHS and eventually states, Exchanges, and issuers to define, evaluate, and provide the EHB.

First, at § 156.120(b)(1), we proposed that the relevant issuers would submit administrative data necessary to identify their health plan. Since an issuer may offer multiple similar plans within a product, this information is critical to the identification of a single, uniquely identified benchmark plan.

At § 156.120(b)(2), we proposed that the relevant issuers would submit data and descriptive information on the plans identified in paragraph (d) in four areas. Additional detail describing the specific data elements that issuers would submit can be found in the revision of the currently approved Health Insurance Web Portal information collection request (ICR). The ICR is approved under OCN: 0938–1086, and is available to the public under a notice and comment period separate from the notice of proposed rulemaking. That notice and comment period is ongoing until August 5, 2012. Section 156.120(b)(2)(i) proposed that certain issuers submit information on covered health benefits in the applicable plans to be used to define certain benchmark plan options.

In section 156.120(b)(2)(ii), we proposed to collect from issuers data on treatment limitations imposed on coverage, if applicable. For example, a quantitative scope and duration treatment limitation might limit a physical therapy benefit to 10 physical therapy visits per year.

At § 156.120(b)(2)(iii), we proposed to collect data on drug coverage. This would include a list of covered drugs and whether each drug is subject to prior authorization and/or step therapy. In response to comments received on this proposal, we no longer intend to collect data on prior authorization and/or step therapy for drug coverage.

At § 156.120(b)(2)(iv) we proposed to collect plan enrollment data, which is discussed in more detail in the ''Plans Impacted'' section below.

Comment: Many commenters requested that HHS collect data in addition to the elements listed in the proposed rule, such as data on exclusions, medical necessity, habilitative services, cost-sharing (including premiums and co-pays), additional drug data, additional data on treatment limits, and a more extensive list of benefits.

Response: We believe the data collection proposed balances a minimal data collection burden on issuers while being sufficient to support the establishment of a potential benchmark for each state. Therefore, we are not requiring issuers to report any additional data elements in this final rule.

Comment: Some commenters expressed concern with the data collection of treatment limitations, particularly with regard to nonquantitative treatment limits, stating that the data elements are related to product design as opposed to benefit coverage and that the data are not necessary to establish EHB standards. Others expressed concern with the collection of prescription drug formularies.

Response: We believe that the data collection described in the proposed rule reflects the appropriate balance between the need to collect data that are sufficiently specific to establish benchmark plans while minimizing the burden on issuers. However, we agree with the commenters that the data on nonquantitative limits are not necessary for benchmark plan purposes and are therefore amending our definition of treatment limitations and data collection to include only quantitative limits. We encourage commenters to continue to submit comments on the PRA package associated with this rule.

Comment: Two commenters expressed concern that the proposed data collection asks for information that is proprietary and confidential.

Response: The data HHS intends to collect are part of the contract agreement between the issuer and enrollees in the plan and available to every enrollee. Therefore, we believe issuers will not experience adverse commercial effects as a result of reporting the data.

Comment: Some commenters recommended that HHS leverage data already collected by states and by HealthCare.gov for purposes of establishing default benchmark plans and urged HHS to synchronize the collection of data described in the proposed rule with data collection to support HealthCare.gov.

Response: The benefit data are consistent with the data collected to support HealthCare.gov. We believe it is necessary to collect additional information related to treatment limitations and drug coverage to establish the definition of essential health benefits. We also note that the data we intend to collect to establish potential benchmark plans are more recent and at a plan level.

Comment: Several commenters requested that HHS clarify specific data elements of the proposed data collection, for example that HHS describe the level of specificity and establish the format for data submission. One commenter recommended that HHS modify the language in its data collection on drugs from ''drug coverage'' to ''formulary'' and urged HHS to ensure a flexible prescription drug benefit.

Response: We refer commenters to the relevant parts of the PRA package associated with the NPRM and available at *http://www.cms.gov/Regulations-and Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS1247405.html.* The PRA package includes additional information on the data HHS intends to collect with regard to treatment limitations, as well as a list of the data elements.

3. Issuers Who Will Report (§ 156.120(c))

Section 156.120(c) of the proposed regulation specified that these reporting requirements would apply only to certain issuers. Specifically, we proposed to collect data from the issuers in each state that offer the three largest health insurance products, by enrollment, in that state's small group market. We proposed that enrollment data submitted to *www.HealthCare.gov* would be the source of product enrollment and therefore, the products eligible to be benchmarks based on enrollment (described in part 159 of this title) on March 31, 2012, the date set forth in the December 16, 2011 EHB bulletin. State data may vary from *www.HealthCare.gov* data, and we requested comment on whether states should be permitted to use an alternative data source for determining the enrollment in the small group market. We also solicited comment on whether closed block products or association products should be included as options in the selection of the largest three products.

Under the approach outlined in the EHB bulletin, states would be permitted to select their own benchmark plans from a set of options. State submissions of these selections are information collections under the PRA. As part of the PRA package, we requested comment on the draft instructions for states to submit benefits for their selected benchmark plan.

Comment: Several commenters made recommendations with respect to which plans should be available as benchmark plan options. Some commenters recommended that HHS exclude association plans and plans closed to new enrollment as benchmark plan options. In contrast, a few commenters stated that plans closed to new enrollment should be available as benchmark plan options.

Response: As described in the EHB Bulletin, HHS intends to propose that EHB be defined in reference to one of four benchmark plan options. With respect to potential default benchmark plans, we refer commenters to the guidance published on July 2, 2012, titled ''Essential Health Benefits: List of the Largest Three Small Group Products by State,'' [2] which provides a state-by-state list of small group market products available for selection as benchmark plans.

Comment: Several commenters expressed concern that HHS is only collecting data on the small group market benchmark options.

Response: We note that this regulation is narrow in scope and collects data in order to establish potential default benchmark plans in each state. As stated in the EHB Bulletin, the default benchmark plan in each state is the largest small group market plan within the largest small group market product by enrollment, supplemented to reflect coverage in the 10 statutory benefit categories.

Comment: Several commenters recommended that HHS consider additional data to establish EHB, such as national claims data or data from Medicaid.

Response: Our proposed data collection from issuers is consistent with the benchmark approach described in the EHB bulletin, which uses a typical employer plan as a reference to define EHB.

4. Plans Affected (§ 156.120(d))

In § 156.120(d), we proposed that issuers of the largest three products in each state provide information based on the plan with the highest enrollment within the product. For purposes of identifying the benchmark plan, we proposed to identify the plan following the definition of ''portal plan'' in § 159.110 of this chapter.

We stated in the proposed rule that issuers may use their own data to determine which plan within each product has the highest enrollment, although we expect that for many products, the benefits will be the same across plans within the product. We also specified that enrollment data should reflect a plan's entire service area and to the extent possible should align with the timing of the *www.HealthCare.gov* data collection (reflecting enrollment as of March 31, 2012). We requested comment on the necessity of plan-level specificity.

Comment: Several commenters offered feedback on the enrollment data used to identify the plans eligible for benchmark consideration. Several comments supported the use of the HealthCare.gov for determining enrollment. Commenters also urged HHS to allow states to use their own enrollment data and recommended that if state enrollment data conflict with HealthCare.gov data, the state data should be considered. In contrast, one commenter recommended that if state enrollment data are permitted, states should be required to demonstrate that the state data are more accurate.

Response: The guidance published on July 2, 2012, titled ''Essential Health Benefits: List of the Largest Three Small Group Products by State,'' [3] clarifies the small group market products that are available for benchmark plan consideration in each state. In developing this list, HHS worked with states to reconcile enrollment data from HealthCare.gov with state data when necessary.

5. Reporting Requirements (§ 156.120(e))

Finally, § 156.120(e) proposed that issuers described in subparagraph (c) submit the information described in subparagraph (b) to HHS in a form and manner to be determined by HHS. We stated that we intend to make information on final state selections of benchmarks publicly available as soon as possible so that issuers can use it for benefit design and rate setting for 2014. We intend to publish the State-specific benchmarks for notice and comment and then finalize those benchmarks, as approved by the Secretary. We welcomed public comment on this approach.

Comment: Several commenters requested additional guidance on the schedule for collecting data pursuant to this final rule.

Response: We clarify in this final rule that the submission window for applicable issuers will open upon the effective date of this final regulation and remain open until September 4, 2012. Issuers will use the Health Insurance Oversight system to make these submissions.

Comment: Several commenters urged HHS to make the data collected pursuant to this final rule, including data on benefits, treatment limits, and prescription drugs, publicly available to all stakeholders. Several commenters urged HHS to release these data as soon as possible. In addition, some commenters recommended that HHS establish a federal oversight role in the evaluation and approval of state-specific EHB packages.

Response: HHS intends to publish State-specific benchmarks for notice and comment.

B. Voluntary Data Collection From Stand-Alone Dental Plans

Section 1302(b) of the Affordable Care Act outlines the ten statutory benefit categories, including pediatric oral care, which must be covered by applicable plans. Section 1302(b)(4)(F) allows QHPs in an Exchange in a state to choose not to offer coverage for pediatric oral services provided that a stand-alone dental benefit plan that covers pediatric oral services is offered

[2] Available at: *http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf.PDF.*

[3] Available at: *http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf.PDF.*

through the same Exchange. In order for QHPs to know whether their plan design must include pediatric oral services, issuers need to know if stand-alone dental plans would be offered through their Exchange. To facilitate and streamline the communication of this information, we proposed to collect, on a voluntary basis, information from likely stand-alone dental issuers to find out whether various Exchanges are likely to have stand-alone plans as options.

Comment: One commenter expressed concern that the data collection from stand-alone dental plans described in the proposed rule would be voluntary, and recommended that HHS require QHPs to offer pediatric dental benefits unless there is confirmation that a stand-alone dental plan will be offered.

Response: We appreciate the commenter's concern and note that the goal of this data collection is to begin the process of identifying which issuers intend to offer stand-alone dental coverage in Exchanges. We believe that a requirement is not necessary and this voluntary collection was only proposed to facilitate the most efficient exchange of information between issuers.

C. Accreditation of QHP Issuers (§ 156.275)

1. Recognition of Accrediting Entity by HHS (§ 156.275(c)(1))

Section 1311(c)(1)(D)(i) of the Affordable Care Act directs a health plan to ''be accredited with respect to local performance on clinical quality measures * * * by any entity recognized by the Secretary for the accreditation of health insurance issuers or plans (so long as any such entity has transparent and rigorous methodological and scoring criteria).'' HHS has determined that recognizing entities through an interim phase one process is necessary to meet the timeline for Exchange QHP certification activities and may include the accreditation requirement, depending on the uniform timeline established by an Exchange. In the proposed rule, we stated that after a survey of the market, to HHS's knowledge, only two entities that accredit health plans meet or plan to meet the statutory requirements this year. We proposed recognition of the National Committee for Quality Assurance (NCQA) and URAC on an interim basis for the purpose of accreditation of QHPs, subject to the conditions specified in paragraphs (c)(2), (c)(3), and (c)(4) of § 156.275 of the proposed rule. As such, we proposed for this recognition to be effective once these conditions are met, at which time HHS would provide notification in the **Federal Register**. We requested comment on whether or not there are other accrediting entities that meet or would meet the statutory requirements this year.

In addition, we proposed certain data sharing and performance standards for the recognized accrediting entities.

We are making a technical correction in this final rule to clarify that both NCQA and URAC currently meet certain statutory requirements for accreditation. At the time the proposed rule was published, we did not include the fact that URAC had already released its Health Plan Accreditation Program Version 7 effective January 3, 2012, which includes reporting on a CAHPS survey and a set of clinical performance measures which are statutorily required to be considered as part of accreditation. Here, we clarify that both entities have already issued health plan accreditation standards that meet the conditions for recognition as detailed in paragraphs (c)(2)(ii), (c)(2)(iv) and (c)(3) of this rule.

Comment: The vast majority of commenters expressed support for recognizing NCQA and URAC in phase one of the process to recognize accrediting entities. Commenters agreed with provisions to identify these two entities in this interim phase and encouraged HHS to finalize its recognition of NCQA and URAC as soon as possible.

Response: We intend to provide notification in the **Federal Register** to make this recognition effective once the documentation requirements in (c)(4) are satisfied.

Comment: One commenter stated that the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) should be recognized as an accrediting entity for the purposes of QHP certification in addition to the NCQA and URAC in the phase one recognition process. The commenter contends that AAAHC meets the requirements for the phase one recognized accrediting entities.

Response: Upon review of the AAAHC's accreditation processes and standards, we believe that, currently, the AAAHC does not meet the statutory requirements necessary to be recognized for phase one. Our review indicates that the AAAHC does not currently score clinical quality and CAHPS data from health plans as part of accreditation in a standardized, comparable way across health plans using transparent and rigorous methodological and scoring criteria, as directed by section 1311(c)(1)(D)(i) of the Affordable Care Act and 45 CFR156.275(c)(3), which is finalized in this rule. We believe that the methodology and scoring criteria for accreditation by recognized accrediting entities is a significant requirement that contributes to the strength and validity of the accreditation of QHPs. For these reasons, the statutory accreditation requirements for QHP issuers would not be met if AAAHC were recognized as an accrediting entity as part of the phase one recognition process. In the final rule, we are maintaining the proposed recognition of the NCQA and URAC in the interim phase one process of recognizing accrediting entities. We encourage entities that would like to be recognized as accrediting entities for the purposes of fulfilling the accreditation requirement for QHPs in the future to prepare and plan to apply for the phase two recognition process. We anticipate that the future recognition process will, at a minimum, require accreditation on local performance in the nine categories specified in 45 CFR 156.275(a)(1) and clinical measures that span a broad range of conditions and domains.

Comment: Two commenters requested that CMS establish an accreditation recognition process that enables New York and other states with rigorous issuer regulation, state licensing and quality monitoring requirements to be recognized as accrediting entities in phase one such that accreditation by entities such as NCQA and URAC is unnecessary if QHP issuers are licensed in such states. The commenters state that the licensing and oversight processes and standards in New York exceed those of NCQA and URAC.

Response: The standards described by commenters are currently for state licensing and oversight requirements and not for accreditation of health plans. However, the statute specifically directs that QHPs be accredited and that the Secretary recognize accrediting entities. In the final rule, we are maintaining the proposed recognition of the NCQA and URAC in the interim phase one process of recognizing accrediting entities. However, we will consider the role of states in the phase two recognition process for accrediting entities.

Comment: One commenter requested a specific public deadline for URAC to obtain full approval as a recognized accrediting entity so that QHPs may confidently choose their accreditation provider and begin their accreditation process immediately. The commenter suggests that if URAC does not meet full approval for being a recognized accrediting entity by a specified deadline, that the accreditation requirement be delayed until sufficient accrediting entity choices are available.

Response: As noted, we have made a technical correction to the proposed rule to accurately state that URAC has already released its Health Plan Accreditation Program Version 7 which includes reporting on a CAHPS survey and a set of clinical performance measures. We intend to recognize both URAC and the NCQA as recognized accrediting entities for the interim phase one recognition process once both entities fulfill the documentation requirements finalized in § 156.275(c)(4).

Comment: One commenter requested clarification regarding which health plan accreditation program URAC is proposing because there are multiple materials referenced including Health Plan Accreditation Program 7.0, Health Insurance Exchange Version 7.1 and measures Version 1.3

Response: We clarify that URAC's publicly released Health Plan Accreditation Program Version 7 includes the standards that meet the statutory requirements to be recognized as an accrediting entity of QHPs and has been effective since January 3, 2012.

Comment: Several commenters expressed concern that NCQA or URAC accreditation is not the best measure of the quality and effectiveness of Consumer Operated and Oriented Plans (CO–OP). The commenters are concerned that the accreditation processes of NCQA and URAC do not adequately address many of the key goals established for CO–OPs under the Affordable Care Act, including member control, consumer focus and benefit delivery innovation. Commenters proposed that the accrediting entities modify their accreditation processes to include a focus on the unique nature of CO–OPs.

Response: Pursuant to 45 CFR 156.520(e)(2), CO–OPs must meet the same accreditation standards as other QHPs. We maintain, in this final rule, the recognition of accrediting entities for phase one. We will consider the unique goals established for all QHPs including CO–OP plans as we develop the requirements for the phase two recognition process.

2. Phased Recognition Process for Accrediting Entities (§ 156.275(c)(1))

We proposed that the recognition as an approved entity for accreditation of QHPs is effective until it is rescinded or this interim phase one process is replaced by the process that we intend to identify in future rulemaking. We proposed for the future phase two recognition process to include an application procedure, standards for recognition, criteria-based review of applications, public participation, and public notice of the recognition for entities seeking to become a recognized accrediting entity. We welcomed comments to inform this future rulemaking.

Comment: A few commenters stated that recognized accrediting entities' accreditation processes should be equally rigorous, include comparable accreditation results and use consistent standards. One commenter urged CMS to establish standards as part of the phase two recognition process, then compare these standards with the phase two accrediting entities' standards to recognize them as accrediting entities for the purposes of QHP accreditation.

Response: We agree that recognized accrediting entities should have rigorous, comparable processes and standards. We will consider the commenter's suggestion regarding use of a crosswalk to compare and ensure that each recognized accrediting entity meet the standards for the phase two recognition process. We will be establishing these standards in future rulemaking and will replace the phase one process codified in § 156.275(c)(1).

Comment: One commenter requested clarification and public transparency of a timeline for moving from phase one to phase two of recognizing accrediting entities. The commenter questioned whether the proposed phases will align with the phased approach also being planned for new quality reporting and display requirements. The commenter recommended that HHS consider the different timelines across Exchanges for requiring accreditation of QHP issuers.

Response: We intend to establish through future rulemaking the recognition process of accrediting entities to align with the timeframe of other quality reporting requirements, including establishing a quality rating system. We recognize that it is important to coordinate these requirements for effective quality reporting and minimal burden on issuers. We will consider commenters' recommendations regarding the phase two recognition process as we develop future rulemaking.

Comment: One commenter requested clarification that the recognized accrediting entities from phase one would need to go through the full application process proposed for phase two rather than be grandfathered into phase two recognition.

Response: As we stated in the proposed rule, we maintain that the recognition of accrediting entities in phase one is effective until it is rescinded or this interim phase one process is replaced by the phase two process. We are clarifying that a phase one recognized accrediting entity must complete the application to be recognized for the phase two recognition process that we intend to identify in future rulemaking. We intend to propose in future rulemaking that the accreditation that is obtained from NCQA or URAC would be recognized for the purposes of QHP certification until this accreditation expired, regardless of whether NCQA or URAC continue to be recognized as accrediting entities in the future phase two recognition process.

Comment: A few commenters requested HHS to clearly distinguish the broader quality requirements on Exchanges and health insurance issuers and stated that accreditation should not be considered a permanent substitute for such requirements.

Response: We acknowledge that accreditation is not a substitute for the broader quality requirements included in the Affordable Care Act. We intend to issue rulemaking and welcome future public comment and stakeholder input regarding the quality requirements on Exchanges and health insurance issuers.

Comment: One commenter recommended that HHS monitor fees that accrediting entities charge and to potentially place a limit on fees that may not be included in the medical loss ratio (MLR) calculation. The commenter recommended that the criteria for review in the phase two recognition process for accrediting entities include full transparency in pricing.

Response: Accreditation user fees are part of the quality improvement component of MLR under 45 CFR 158.150(b)(2)(i)(5). We believe more entities will apply to meet the standards that we will be issuing for the phase two recognition process for accrediting entities, increasing competition.

3. Clinical Quality Measure Standards (§ 156.275(c)(2)(ii))

We proposed that the first condition of recognition is based on section 1311(c)(1)(D)(i) of the Affordable Care Act, which requires accreditation on local performance in nine categories, which are codified in 45 CFR 156.275(a)(1):

- Clinical quality measures such as the Healthcare Effectiveness Data and Information Set (HEDIS);
- Patient experience ratings on a standardized Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey;
- Consumer access;
- Utilization management;
- Quality Assurance;
- Provider credentialing;

- Complaints and appeals;
- Network adequacy and access; and
- Patient information programs.

We proposed in § 156.275(c)(2)(ii) that the clinical quality measures meet certain criteria in order for the accreditation to meet the requirements outlined in section 1311(c)(1)(D) of the Affordable Care Act and 45 CFR 156.275(a)(1)(i). These criteria were chosen based on stakeholder input and to ensure that the clinical quality measures used in accreditation are applicable to the Exchange enrollee population.

We proposed that the clinical quality measure set must:

- Span a breadth of conditions and domains, including, but not limited to, preventive care, mental health and substance abuse disorders, chronic care, and acute care;
- Include measures that are applicable to adults and separate measures that are applicable to children;
- Align with the priorities of the National Strategy for Quality Improvement in Health Care issued by the Secretary and submitted to Congress on March 12, 2011 (see *http://www.healthcare.gov/law/resources/reports/quality03212011a.html*) and the National Quality Strategy: 2012 Annual Progress Report released by HHS on April 30, 2012 (see *http://www.healthcare.gov/news/factsheets/2012/04/national-quality-strategy04302012a.html*);
- Only include measures that are either developed or adopted by a voluntary consensus standards setting body (such as those described in the National Technology and Transfer Advancement Act of 1995 (NTTAA) and Office of Management and Budget (OMB) Circular A–119 (1998)) or, where appropriate endorsed measures are unavailable, are in common use for health plan quality measurement and meet health plan industry standards; and,
- Be evidence based.

We solicited comments on these standards for clinical quality measures, including whether additional standards for such measures should be included, the standards for using endorsed and non-endorsed measures, and whether HHS should require entities seeking recognition as accrediting entities to review specific clinical measures as part of accreditation and if so, which ones.

Comment: One commenter recommended additional criteria for clinical quality measures to include domains such as outcomes and process apart from access and patient satisfaction, be risk-adjusted when appropriate, be scientifically sound and be periodically updated for use within the accreditation standards. A few commenters recommended prioritizing measures that are being used concurrently by public and private sector purchasers and payers. Commenters also suggested that HHS require accrediting entities to review health plan processes including marketing practices, member privacy, language access services and health plan efforts to reduce health care disparities and to provide culturally competent services.

Response: Much of the recommended criteria for clinical quality measures are already current components of accreditation standards and processes of the accrediting entities being recognized in the interim phase one. In this final rule, we are maintaining the standards that we proposed for clinical quality measure sets but will consider the additional suggested criteria in future rulemaking on phase two.

Comment: Several commenters expressed concern that clinical quality measure standards used by current accrediting entities and the CAHPS survey process do not include people with disabilities. Several commenters recommended that phase two recognition process requirements for recognized accrediting entities should include standards for clinical quality measures that address the needs of people with disabilities and that specifically address persons in need of habilitative and rehabilitative services and devices. Commenters suggested that the accreditation process should address habilitative and rehabilitative related quality measures, the evaluation of quality of life beyond that represented by the typical quality indicators and network adequacy.

Response: As part of future rulemaking on the phase two recognition process, we will consider these standards.

Comment: One commenter requested clarification regarding which CAHPS survey will be used to measure patient experience or whether a future CAHPS survey will be developed. The commenter opposed the use of instruments such as the CAHPS Surgical Care Survey and the Clinician/Group CAHPS as proposed measure tools and recommended inclusion of all types of providers such as advanced practice registered nurses and certified registered nurse anesthetists in any measurement tools developed to adequately capture the patient and caregiver experience.

Response: We are finalizing the requirement that the recognized accrediting entities require accreditation on local performance in patient experience ratings on a standardized CAHPS survey. We are not specifying which CAHPS surveys that the recognized accrediting entities must use as part of accreditation but expect that the recognized accrediting entities will use health plan CAHPS surveys and will not use the surgical care and/or Clinician/Group CAHPS surveys.

Comment: Several commenters expressed support that accreditation include, to the extent possible, measures that are already developed or endorsed by recognized consensus standards setting bodies. A few commenters stated that measures should be based on national standards such as National Quality Forum (NQF) endorsed measures. One commenter requested clarification regarding the language related to measures that are developed or adopted by a voluntary consensus standards setting body. This commenter recommended that CMS specify that measure sets used for QHP accreditation only include measures that are endorsed by the entity with a contract with the Secretary, which is currently only the National Quality Forum (NQF).

Response: We agree that NQF plays a significant role in endorsing quality measures. However, we do not require clinical quality measures to either be endorsed by NQF or submitted for review to NQF since recognized accrediting entities may use a diverse measurement set. We maintain the criteria we proposed for the clinical quality measure set. We will consider the commenter's recommendations as we set the measurement standards as part of the future rulemaking on phase two.

Comment: One commenter suggested that the clinical quality measure requirements for recognized accrediting entities include measures that reflect patients' and families' perspectives and measures that advance primary care services and medical homes.

Response: We believe that the patient perspective is captured by the requirement that accreditation include patient experience ratings on a standardized CAHPS survey in 45 CFR 156.275(a)(1). We also maintain in this final rule that clinical quality measures be aligned with priorities of the National Strategy for Quality Improvement in Health Care (''the National Strategy''). The National Strategy includes as core principles, person-centeredness and family engagement, and strengthening primary care using models such as patient-centered medical homes.

Comment: A few commenters recommended requiring independent auditing of results as an additional

criterion for clinical quality measures considered as part of accreditation to ensure the accuracy and comparability of results, to provide an important feedback loop for plans, and to instill support among all stakeholders.

Response: While independent auditing of results could be an effective way to assure accuracy and comparability and provide useful verification information to issuers and stakeholders, we maintain in the final rule the criteria we proposed in § 156.275(c)(2)(ii), which was based on diverse stakeholder input.

Comment: One commenter suggested that the phase two recognition process should include clinical measures, such as those from Minnesota Community Measurement, which address health outcomes for patients rather than process measures concerning the kind of care or tests that patients receive. Another commenter suggested that HHS examine and consider adoption of the uSPEQ measurement tool, which incorporates both consumer and employee satisfaction as primary factors in assessing the success of a program and that has been used to evaluate programs from a consumer perspective.

Response: Many of the quality measures currently used by the recognized accrediting entities address patients' health outcomes and patient experience. We will consider clinical health outcomes measures from organizations such as the Minnesota Community Measurement and measurement tools such as uSPEQ when we propose rules on phase two.

Comment: One commenter recommended that recognized accrediting entities require qualified health plans seeking accreditation to submit data on HIV quality measures to ensure that the care supported by qualified health plans can be effectively monitored and evaluated. The commenter suggested that, at a minimum, plans should be required to submit data for HIV measures proposed for Stage II Meaningful Use and to select from measures that are being used by Medicare, Medicaid and the HIV/AIDS Bureau.

Response: The recognized accrediting entities do not currently use an HIV-related quality measure in their accreditation scoring. However, there are such measures under development for accreditation standards. We maintain in the final rule that measures selected should be developed or adopted by a voluntary consensus standards setting body, appropriately endorsed whenever possible and span a breadth of conditions. We support the alignment of measures with existing public and private measurement initiatives and intend to consider other measures during rulemaking for phase two.

Comment: One commenter endorsed HHS's recognition of URAC as an accrediting entity largely because it supports data collection requirements URAC has already implemented to help ensure QHP issuers seeking accreditation are currently complying with the Paul Wellstone-Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The commenter encouraged HHS to require that as a condition of becoming a QHP accrediting entity, NCQA, as well as other possible future QHP accrediting entities, data collection of MHPAEA compliance as part of each QHP's local performance in the nine categories, including utilization management.

Response: We will consider the commenter's suggestion to include data collection related to MHPAEA compliance when we develop standards for the phase two process for recognizing accrediting entities in future rulemaking.

4. Product Type Level of Accreditation (§ 156.275(c)(2)(iii))

In § 156.275(c)(2)(iii), we proposed that recognized accrediting entities provide separate accreditation determinations for each product type offered by a QHP issuer in each Exchange (for example, Exchange HMO, Exchange point of service (POS) plans, and Exchange preferred provider organization (PPO) plans), based on data submitted by the issuer that are representative of the population of each QHP in that Exchange product type. We believe that the product type is the appropriate level for accreditation as it would balance capturing the QHP experience and enabling the reporting of valid and reliable performance measures. An issuer may offer multiple QHPs under the same product type, in the same Exchange, if the product type for that Exchange is accredited, each of the corresponding QHPs would be considered to be accredited. We solicited comments on the proposed level of accreditation. We also solicited comments on circumstances under which an exception should be made to the accreditation determination being made at the Exchange product type level.

Comment: A few commenters opposed requiring accreditation at the Exchange product type level due to their belief that product type level accreditation is not current market practice and potential challenges of inadequate sample size if accreditation moves to more granular levels. Several commenters expressed support for product type level accreditation to facilitate comparisons based on quality and transparency. One commenter recommended that states should have the responsibility to dictate the product level requiring accreditation because implementation of federally-defined product types would disrupt states' existing regulatory classifications and accreditation requirements for insurance products.

Response: We maintain in the final rule that recognized accrediting entities provide separate accreditation determinations for each Exchange product type since QHP issuers must be accredited on the basis of local performance per § 156.275(a)(1). We believe that accreditation at the overall QHP issuer level would not adequately meet the requirement that QHP issuers be accredited on the basis of local performance. We believe that accreditation at the plan or metal-level would also be unreasonable because of the likely inadequate sample size for reliable performance data reporting.

Comment: One commenter stated that although NCQA generally accredits by product type, which combines product line (that is, Commercial, Medicare, Medicaid or Exchange) with product (that is, HMO, POS or PPO), there are some exceptions. For example, with NCQA approval, issuers can combine HMO and PPO or POS and PPO (or all three) products for HEDIS reporting purposes or they can combine the same product across contiguous states for statistically valid HEDIS and CAHPS results.

Response: We understand that there may be some necessary exceptions to product type level accreditation for methodological reasons. We maintain that recognized accrediting entities provide separate accreditation determinations for each QHP product type offered in an Exchange (for example, Exchange HMO or Exchange PPO). However, we agree that in some instances, such as when sample sizes are inadequate to provide statistically valid results at the Exchange product type level, an exception to Exchange product level accreditation would then be reasonable. In the final rule, we are modifying the requirement that recognized accrediting entities provide accreditation at the Exchange product type level to permit an exception when this Exchange product type level accreditation is not methodologically sound. In such cases, the recognized accrediting entity must demonstrate that the Exchange product type level accreditation is not methodologically

sound as a condition of the Exchange granting an exception such as authorizing Exchange product type combinations across contiguous states (for example, Exchange HMO in New York and Exchange HMO in New Jersey.) We encourage Exchanges to collaborate and consult with state Departments of Insurance and other state regulatory and licensing bodies in granting the exception.

Comment: One commenter requested clarification on whether NCQA and URAC will be responsible for accrediting dental plans. The commenter suggested that designated accrediting entities use specific clinical quality measures developed by the Dental Quality Alliance (DQA) to accredit dental plans.

Response: We are not currently requiring that recognized accrediting entities accredit stand-alone dental plans. The Exchange final rule specifies that to the extent that accreditation standards specific to stand-alone dental plans do not exist,[4] then such plans would not be required to meet the accreditation timeline required by 45 CFR 155.1045.

Comment: A few commenters recommended allowing plans to meet Exchange-specific requirements as part of their current accreditation instead of undergoing a separate accreditation process solely for Exchanges. One commenter recommended that at a minimum, issuer-level accreditation on policies and procedures should apply across product types offered within Exchanges.

Response: We agree with commenters and clarify our interpretation of this final rule that the recognized accrediting entities may review policies and procedures at the issuer level, provided that the same policies and procedures apply across an issuer's product lines and product types. We maintain that the recognized accrediting entity must provide accreditation at the Exchange product type level but we do not require recognized accrediting entities to duplicate valid and applicable work or reviews conducted in connection with accreditations provided at a different level for the same issuer.

5. Network Adequacy and Access in Accreditation Standards (§ 156.275(c)(2)(iv))

As part of our proposal that recognized accrediting entities include network adequacy and access in the accreditation standards, we proposed in subparagraph (c)(2)(iv) that the network adequacy and access standards outlined in section 1311(c)(1)(D) of the Affordable Care Act and 45 CFR 156.275(a)(1)(viii) must, at a minimum, be consistent with the general requirements for network adequacy standards for QHP issuers codified in § 156.230(a). We solicited comments on this proposed requirement.

Comment: We received one comment that the current accreditation standards relating to network adequacy in use by NCQA are not fully consistent with the general requirements for network adequacy standards in § 156.230(a) because NCQA does not currently address the inclusion of essential community providers in their network adequacy assessment. However, in its comment on the proposed rule, NCQA stated willingness to work with CMS to address this in their accreditation standards in the future.

Response: We acknowledge that NCQA does not currently capture information regarding essential community providers as part of its current accreditation standards. Because the direction to cover essential community providers is included as a separate provision defined in § 156.235, we are finalizing the rule for the phase one recognition process such that network adequacy and access accreditation standards must be consistent with § 156.230(a)(2) and § 156.230(a)(3) only. A review of the inclusion of essential community providers as part of accreditation standards will not be required in the interim phase one recognition process. This change does not affect the QHP certification standard that QHPs demonstrate essential community provider network adequacy. We will consider proposing that accreditation standards be fully consistent with all general requirements of network adequacy in § 156.230(a) in future rulemaking on phase two.

Comment: One commenter expressed concerns about making network adequacy a part of the accreditation process and stated that it should not be delegated to private accreditors. The commenter believes that this is inherently a regulatory function and should be retained by a regulatory body. One commenter recommends that HHS clearly specify and distinguish the network adequacy responsibilities of Exchanges, QHP issuers, and recognized accrediting entities to ensure that consumers' access and rights are protected and information on provider networks is accurate.

Response: Section 1311(c)(1)(D)(i) of the Affordable Care Act and 45 CFR 156.275(c)(2)(iv) direct that recognized accrediting entities include network adequacy and access in the accreditation standards. We clarify in the final rule that for the phase one recognition process, network adequacy and access accreditation standards should be consistent with § 156.230(a)(2) and § 156.230(a)(3), including maintaining a network that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay and is consistent with the network adequacy provisions of section 2702(c) of the PHS Act.

6. Methodological and Scoring Criteria Requirements (§ 156.275(c)(3))

In § 156.275(c)(3), we proposed that each recognized accrediting entity must use transparent and rigorous methodological and scoring criteria, as required by section 1311(c)(1)(D)(i) of the Affordable Care Act. We did not receive comments on this section and are finalizing the provisions as proposed.

7. Documentation Requirements (§ 156.275(c)(4))

In § 156.275(c)(4), we proposed that each accrediting entity recognized by the Secretary, as a condition of gaining and maintaining recognition, provide to HHS its current accreditation processes to demonstrate that the entity meets the conditions described in §§ 156.275(c)(2) and 156.275(c)(3). Documentation should include accreditation standards and requirements, processes, and measure specifications for performance measures. We proposed that the initial submission of documentation be made at a time specified by HHS. We solicited comment on this timing requirement, specifically whether NCQA and URAC may only be recognized if this documentation is provided within a certain number of days of the final rule. Recognized accrediting entities must also submit any proposed changes or updates to the accreditation and measurement process with 60 days notice prior to implementation such that HHS has ample opportunity to review and comment on whether these changes or updates are significant enough to mean that the conditions in §§ 156.275(c)(2) and 156.275(c)(3) would no longer be met. We solicited comments on these documentation standards.

Comment: One commenter recommended a timeframe of ninety days for submission of required documentation by accrediting entities. The accrediting entities being recognized in phase one stated no opposition to submitting documentation

[4] Exchange Final Rule published in 77 FR 18310 at 18412 (March 27, 2012).

within a timeframe specified by HHS; one commented that it would provide documentation at any time it is required. And we received numerous comments in support of the proposed 60 day timeframe for changes and updates.

Response: We only received one comment regarding a specific timeframe for documentation submission. We finalize in this rule that the documentation from recognized accrediting entities, due under § 156.275(c)(4) be provided within 60 days of the publication of this final rule. We believe that 60 days is a reasonable time for accrediting entities to submit their current accreditation processes, standards, and requirements.

Comment: A few commenters requested clarification regarding providing notice on updates or changes to the accreditation and measurement process and providing health plans with adequate time to implement the proposed changes. We received numerous comments in support of the proposed 60 day timeframe for changes and updates. The commenters' recommended that HHS clarify that issuers should be provided with a one year advance notice of changes in accreditation and measurement process. One commenter recommended that regulations should permit accrediting entities to address any errors found in technical specifications within a shorter timeframe. One commenter recommended that HHS seek input from affected stakeholders to determine whether any proposed changes are significant enough to mean that the conditions in §§ 156.275(c)(2) and 156.275(c)(3) would no longer be met. The commenter also requested clarification regarding HHS's turnaround time to review and comment on accrediting entities' planned changes and updates.

Response: In the rule, we finalize this standard to state that recognized accrediting entities submit to HHS any proposed changes or updates to the accreditation and measurement process with 60 days prior to public notice. HHS does not intend to interfere with current practices of accrediting entities to provide advance notice to health plans and agree with commenters that health plans should have adequate time to implement any proposed changes. We also agree with the commenter's recommendation that accrediting entities should correct any errors to technical specifications within a shorter time period. We clarify that recognized accrediting entities do not have to provide advance notice to CMS of non-substantive error corrections. We intend to seek diverse stakeholder input if conditions in §§ 156.275(c)(2) and 156.275(c)(2) are no longer met. We intend to be expeditious during our review of any changes and updates of accreditation and measurement process.

8. Authorization of Data Sharing by Accrediting Entities to the Exchange and HHS (§ 156.275(a)(2))

As codified in § 156.275(a)(2), a QHP issuer must authorize the accrediting entity that accredits its QHPs to release to the Exchange and HHS certain materials related to QHP accreditation. In accordance, we proposed that when authorized by an accredited QHP issuer, recognized accrediting entities provide the following accreditation survey data elements to the Exchange in which the issuer plans to operate one or more QHPs:

- The name, address, Health Insurance Oversight System (HIOS) issuer identifier,[5] and unique accreditation identifier(s) of the QHP issuer.
- The QHP issuer's accredited product line(s) (that is, Commercial, Medicaid, Exchange) and type(s) which have been released;
- For each of the QHP issuer's accredited product type(s), HIOS product identifier (if applicable); accreditation status, survey type or level (if applicable); accreditation score; expiration date of accreditation; and clinical quality measure results and adult and child CAHPS measure survey results (and corresponding expiration dates of these data) at the level specified by the Exchange (for example, QHP product or plan level).

Such disclosure was proposed to occur on the following occasions: during the annual certification period or as changes occur to these data throughout the coverage year. We solicited comment, including whether fewer or more categories of information should be included.

The proposed rule would permit Exchanges to arrange additional data sharing agreements with the recognized accrediting entities if they choose, such as information on the QHP issuer's policies and procedures. We solicited comments as to whether recognized accrediting entities must provide this additional information upon request from an Exchange.

Comment: Several commenters recommended that recognized accrediting entities provide the Exchange a copy of the most recent accreditation survey for each accredited product as well as any corrective action plans and summaries of findings or other similar written comments or analysis that is provided to each insurer by the accrediting entities. A few commenters expressed concern regarding the release of proprietary health plan data and data containing sensitive personal health information. The commenters recommended that data sharing should be limited to quality measures and CAHPS survey results that will be displayed and not include the full accreditation survey or additional information that would undermine the accreditation process. One commenter requested that data be shared with state quality improvement organizations for additional oversight.

Response: 45 CFR 156.275(a)(2) directs QHP issuers to authorize the accrediting entity to release to the Exchanges survey-related information such as corrective action plans or summaries of findings. However, we maintain in the final rule that the recognized accrediting entity provide data through data sharing agreements to an Exchange. We interpret this regulation to permit an Exchange the flexibility, through data sharing agreements, to request additional information or to engage in data sharing with another entity, such as a state quality improvement organization. We did not propose the requirement in this rule that recognized accrediting entities share additional data not identified in § 156.275(a)(2) or § 156.275(c)(5) with Exchanges. We agree with the commenters' recommendations that this qualitative information may provide useful insight to an Exchange. We are modifying the data sharing requirements between the recognized accrediting entities and Exchanges to expressly exclude personally identifiable data.

Comment: One commenter requested more information regarding the process for recognized accrediting entities to provide data to Exchanges.

Response: We will be working closely with the recognized accrediting entities to further clarify the process including definitions of data elements.

Comment: One commenter requested clarification on whether accreditation data must be provided on non-Exchange products during early years of the Exchange and whether a recognized accrediting entity can collect authorizations from issuers to release data elements to an Exchange.

Response: Because it will take time for QHP product type specific accreditation to be available, consistent with the proposed rule, recognized accrediting entities will provide accreditation data from a QHP issuer's existing accreditation on non-Exchange

[5] We expect the QHP issuer will provide the accrediting entity with the HIOS identifiers.

products (for example, commercial and Medicaid) if these data are requested by an Exchange, once the QHP issuer authorizes the release of these data. As codified in § 156.275(a)(2), QHP issuers will authorize the release of their accreditation survey data as part of QHP certification.

Comment: One commenter requested clarification regarding what clinical quality and CAHPS measure results data must be reported (for example, numerators and denominators only or more detailed data like member-level survey results).

Response: The clinical quality measure results and adult and child CAHPS measure survey results specified in the final rule refer to only those measure results attained through a QHP issuer's accreditation from a recognized accrediting entity. To allow Exchanges the flexibility to specify the level of detail that is appropriate and reasonable for the QHPs, we are not further defining the level of reporting of these data for each Exchange.

Comment: One commenter requested clarification regarding what is meant by providing clinical or CAHPS data at the level specified by the Exchange. The commenter stated that there should be sufficient numbers for valid data collection by issuers, but not necessarily at the metal (Bronze, Silver, Gold or Platinum) level.

Response: We recognize that adequate sample size for valid data collection is a critical element of accreditation. We maintain that Exchanges should have the flexibility to request clinical and CAHPS data at the QHP product or plan level if there are adequate sample sizes to capture the QHP experience and enable reporting of valid and reliable performance measures.

Comment: One commenter recommended that CMS collect accrediting entity data on plan performance and scoring information of network adequacy requirements to support CMS' network adequacy review and to minimize documentation requirements.

Response: We agree that these data could support the Exchange in the review of network adequacy standards as part of QHP certification; however, at this time, we are not requiring recognized accrediting entities to provide accreditation survey data elements relating to network adequacy requirements, that are in excess of the disclosure required under § 156.275(a)(2), to the Exchange.

III. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule with some substantive modifications, along with additional non-substantive changes to improve clarity, not noted here. Those provisions of the final rule that differ from the proposed rule are as follows:

Changes to § 156.120(a)

- Changes the definition of treatment limitations to include only quantitative limits, which also removes the requirement to provide data on nonquantitative limits for purposes of this final rule.

Changes to § 156.120(e)

- Establishes a submission deadline for applicable issuers. Issuer submissions are due on September 4, 2012.

Changes to § 156.275(c)(2)(iii)

- Establishes exception authority to the product type level accreditation requirement when the product type level of accreditation is not methodologically sound. In such cases, the recognized accrediting entity must demonstrate that the Exchange product type level accreditation is not methodologically sound as a condition of the Exchange granting an exception to authorize accreditation at an aggregated level.

Changes to § 156.275(c)(2)(iv)

- Removes inclusion of essential community providers under the network adequacy standards for accreditation.
- Maintains that network adequacy standards for accreditation be, at a minimum, consistent with general requirements for network adequacy for QHP issuers codified in § 156.230(a)(2) and (a)(3).

Changes to § 156.275(c)(4)(i)

- Establishes timeframe of within 60 days of publication of the final rule that an accrediting entity must provide current accreditation standards and requirements, processes, and measure specifications for performance measures to demonstrate that each entity meets the conditions specified.

Changes to § 156.275(c)(4)(ii)

- Clarifies that recognized accrediting entities must provide to HHS any proposed changes or updates to accreditation standards, processes and measure specifications for performance measures with 60 days prior to public notification.

Changes to § 156.275(c)(5)

- Adds an exception to protect personally identifiable information.

IV. Collection of Information Requirements

As part of the proposed rule, and in accordance with the Paperwork Reduction Act, we sought comment on the information collection requests (ICRs) associated with the proposed rule. This included the of EHB data (§ 156.120) information collections. We received some comments on this section, which are discussed below. As described above, we finalize § 156.120 as it was proposed, with the addition of a deadline for the reporting requirement in § 156.120(e). On June 5, 2012, we issued a 60-day **Federal Register** notice (77 FR 33221) seeking comments on the revision to the information collection request (ICR), ''Health Care Reform Insurance Web Portal Requirements.'' [6]

In the proposed rule and the June 5, 2012 60-day **Federal Register** Notice, we also sought comment on ICRs that are not discussed in the regulations text contained in this document, including the state selection of a benchmark and the voluntary data collection from standalone dental plans. We received some comments related to these ICRs, which we will consider before submitting the ICR to the Office of Management and Budget for review and approval. We plan to finalize the ICR on benchmark data collection and stand-alone dental separately from the other portions of the ''Health Care Reform Insurance Web Portal Requirements'' ICR. The comment period for this package remains open through August 5, 2012, and we encourage interested parties to submit comments.

In the proposed rule, we also sought comment on ICRs for recognized accrediting entities (§ 156.275). We did not receive comments on the accrediting entities ICRs described in the proposed rule. As described above, although we made some changes to § 156.275 in this final rule, the ICRs are unchanged. We also issued a 60-day **Federal Register** notice seeking comments on these ICRs.[7] That comment period closes on August 1, 2012, and we encourage interested parties to submit comments. Following close of the 60-day comment period, we will submit the accrediting entities ICR to OMB for approval.

What follows is a discussion of comments received on the ICRs related to the EHB data (§ 156.120).

[6] Available at: *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/CMS1247405.html.*

[7] Available at: *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing-Items/cms-10435.html.*

Section 156.120 states that issuers that offer the three largest health insurance products by enrollment in each state's small group market, as determined by HHS based on data submitted in accordance with part 159 of this title for March 31, 2012, must provide the data described in paragraph (b) for the health plan with the highest enrollment within that product. This data collection mirrors the benefit data fields currently collected under the Health Insurance Web Portal PRA package (OCN: 0938–1086) and also includes: The administrative data necessary to identify the health plan, data on covered benefits, any treatment limitations on those benefits, data on drug coverage, and enrollment.

We estimate that it will take four hours for a health insurance issuer to meet this reporting requirement, including data collection, submission, and validation. This estimate is based on current industry surveys collected to monitor the burden of submission of similar data in the Medicare Advantage and Prescription Drug Programs. Given that the three health insurance issuers with the largest products by enrollment in each state (including the District of Columbia) would submit this information, the total burden is estimated to be 612 hours. We anticipate that the reporting requirement would require four hours for one employee at a cost of $77.00 an hour, based on the hourly cost reported by industry in responses to a CMS survey of Medicare Advantage and Prescription Drug Programs which requires employees with similar technical expertise, for a total cost of $308.00 a year per issuer. The total number of respondents required to report would be 153, the largest three issuers/products in each state and the District of Columbia by enrollment, for a total burden of $47,124. Issuers would provide HHS with the data collection requirements through an online tool that we would make available to them.

Comment: We received some comments expressing concern that HHS's burden estimates related to the proposed data collection were too low.

Response: We appreciate these concerns, but for the reasons discussed above, believe that our estimates accurately reflect the burden of reporting.

Comment: One commenter recommended that HHS avoid collection of an ''other'' benefit category because the category is somewhat ambiguous.

Response: HHS included the ''other'' category to allow for full reporting of the benefits, including benefits that do not fall into the set of categories provided under HealthCare.gov.

V. Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

It is HHS's belief that this rule does not reach this economic threshold and thus is not considered a major rule. This rule consists of a data collection from a limited number of health insurance issuers and a data submission by two accrediting entities to HHS. Because of the very limited scope of this final rule, we do not anticipate that there would be any costs associated with this rulemaking in addition to those costs, as outlined below. We derived the costs outlined below from the labor costs as outlined in the Collection of Information section above. The data collection from issuers only applies to the issuers of the three largest products by enrollment in each state's small group market, which would result in a minor economic burden to an estimated 153 issuers, at a total cost across all issuers of $47,124. Additionally, the PRA package that accompanied the proposed rule requested that issuers that wish to offer stand-alone dental plans in an Exchange notify HHS of their intent to participate. We estimate that 20 dental issuers would voluntarily respond, at a total cost across all responding issuers of $770. The two entities which we are recognizing as accrediting entities already meet most of the conditions for phase one of the recognition process, and we anticipate that any required changes to their accreditation processes would be minor and result economic burden that we have estimated at $48,625.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) A proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a proposed rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the Small Business Administration (SBA).

As discussed above, this final rule is necessary to implement certain standards related to the establishment of essential health benefits and recognition of accrediting entities as authorized by the Affordable Care Act. Specifically, this rule outlines collecting data from issuers that offer the three largest small group products in each state and from NCQA and URAC, which are the phase one recognized accrediting entities. For the purposes of the regulatory flexibility analysis, we expect the following types of entities to be affected by this final rule—(1) QHP issuers (2) and NCQA and URAC.

As discussed in the Medical Loss Ratio interim final rule (75 FR 74918), few, if any, issuers are small enough to fall below the size thresholds for small business established by the SBA. In that rule, we used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health earned premiums as a proxy for annual receipts. We estimated that there are 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage. However, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include

receipts from these companies' other lines of business.[8] We further estimate that any issuers that would be considered small businesses are likely to be subsidiaries of larger issuers that are not small businesses.

This rule also directs two accrediting entities, NCQA and URAC, to submit documentation to HHS. The RFA, as noted previously, considers a non-profit entity that is not dominant in its field to be a small entity. We selected both NCQA and URAC because they are the two most dominant actors in the field of health plan accreditation. NCQA is a not-for-profit entity that has been in existence since 1990 and is widely recognized as a national leader in developing health care performance measures and quality standards. NCQA has accredited health plans covering over 70 percent of all Americans.[9] URAC is also a not-for-profit entity that was formed over 20 years ago. URAC accredits plans in every state and, according to its Web site, is the largest accrediting body for health care.[10] Finally, based on their dominant role in accrediting health plans, we believe that NCQA and URAC are both likely to have total annual receipts exceeding the Small Business Administration size standard.[11]

Based on the foregoing, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule would not have a significant economic impact on a substantial number of small entities.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those ''Federal mandate'' costs resulting from: (1) Imposing enforceable duties on state, local, or Tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

This final rule does not place any financial mandates on state, local, or Tribal governments. This rule authorizes a narrow data collection from an estimated 153 issuers, and the only costs associated with this reporting are labor costs, which we anticipate to total $47,124, which is significantly less than the threshold of $139 million. States may, at their option, select a benchmark plan and submit this information to HHS. We anticipate that it would take each state five hours of labor to complete and submit this information and that the per hour labor cost would be similar to that for the issuer data submission, which is $77 per hour. We cannot reasonably anticipate how many states will respond. However, assuming for the sake of argument that all states respond, the total cost would still be under $20,000, which is well below the $139 million threshold. The rule also sets standards for two accrediting entities to submit documentation to HHS as specified in the rule. We expect the cost to the two accrediting entities to be $48,898.

VIII. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final regulation, as it relates to the recognition of accrediting entities, does not impose any costs on state or local governments. However, this regulation includes reporting requirements if a state selects a benchmark plan.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the states, HHS has engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners (NAIC), and consulting with state insurance officials on an individual basis. We believe that this final rule does not impose substantial direct costs on state and local governments, preempt state law, or otherwise have federalism implications. We note that states that choose to select a benchmark plan would be required to submit their benchmark plan selection to HHS, and provide information on the benchmark plan in the same format that is used by issuers. However, we anticipate that the administrative costs related to this requirement are likely to be minimal because the states are likely to obtain this information from the issuers.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department of Health and Human Services certifies that CMS has complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

List of Subjects in 45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, as set forth below:

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 1. The authority citation for part 156 is revised to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 2. Add subpart B to part 156 to read as follows:

[8] According to the Small Business Administration size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers) (for more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*).

[9] See ''About NCQA,'' NCQA Web site. Available at *http://www.ncqa.org/tabid/675Default.aspx.*

[10] See ''Frequently Asked Questions'' URAC Web site. Available at: *https://www.urac.org/about/faqs.aspx#General.*

[11] According to the Small Business Administration size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524298 (All Other Insurance Related Activities) (for more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*).

Subpart B—Standards for Essential Health Benefits, Actuarial Value, and Cost Sharing

§ 156.120 Collection of data from certain issuers to define essential health benefits.

(a) *Definitions.* The following definitions apply to this section, unless the context indicates otherwise:

Health benefits means benefits for medical care, as defined at § 144.103 of this chapter, which may be delivered through the purchase of insurance or otherwise.

Health insurance product has the meaning given to the term in § 159.110 of this chapter.

Health plan has the meaning given to the term, ''Portal Plan'' in § 159.110 of this chapter.

Small group market has the meaning given to the term in § 155.20 of this chapter.

State has the meaning given to the term in § 155.20 of this chapter.

Treatment limitations include limits on benefits based on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. Treatment limitations include only quantitative treatment limitations. A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation.

(b) *Required information.* The issuers described in paragraph (c) of this section must provide the following information for the health plans described in paragraph (d) of this section in accordance with the standards in paragraph (e) of this section:

(1) Administrative data necessary to identify the health plan;

(2) Data and descriptive information for each plan on the following items:

(i) All health benefits in the plan;

(ii) Treatment limitations;

(iii) Drug coverage; and

(iv) Enrollment;

(c) *Issuers required to report.* The issuers that offer the three largest health insurance products by enrollment, as of March 31, 2012 (enrollment is determined by HHS based on data submitted in accordance with part 159 of this title) in each state's small group market must provide the information in paragraph (b) of this section.

(d) *Plans affected.* The issuers described in paragraph (c) of this section must provide the information described in paragraph (b) of this section for the health plan with the highest enrollment (as determined by the issuer) within the products described in paragraph (c) of this section.

(e) *Reporting requirement.* To ensure consistency in reporting, an issuer described in paragraph (c) of this section must submit, in a form and manner to be determined by HHS, the information described in paragraph (b) of this section to HHS no later than September 4, 2012.

■ 3. Amend § 156.275 by adding paragraph (c) to read as follows:

§ 156.275 Accreditation of QHP issuers.

* * * * *

(c) *Accreditation*—(1) *Recognition of accrediting entity by HHS.* Effective upon completion of conditions listed in paragraphs (c)(2), (c)(3), and (c)(4) of this section, at which time HHS will notify the public in the **Federal Register**, the National Committee for Quality Assurance (NCQA) and URAC are recognized as accrediting entities by the Secretary of HHS to provide accreditation of QHPs meeting the requirement of this section.

(2)(i) *Scope of accreditation.* Subject to paragraphs (c)(2)(ii), (iii), and (iv) of this section, recognized accrediting entities must provide accreditation within the categories identified in paragraphs (a)(1) of this section.

(ii) *Clinical quality measures.* Recognized accrediting entities must include a clinical quality measure set in their accreditation standards for health plans that:

(A) Spans a breadth of conditions and domains, including, but not limited to, preventive care, mental health and substance abuse disorders, chronic care, and acute care.

(B) Includes measures that are applicable to adults and measures that are applicable to children.

(C) Aligns with the priorities of the National Strategy for Quality Improvement in Health Care issued by the Secretary of HHS and submitted to Congress on March 12, 2011;

(D) Only includes measures that are either developed or adopted by a voluntary consensus standards setting body (such as those described in the National Technology and Transfer Advancement of Act of 1995 (NTTAA) and Office of Management and Budget (OMB) Circular A–119 (1998)) or, where appropriate endorsed measures are unavailable, are in common use for health plan quality measurement and meet health plan industry standards; and

(E) Is evidence-based.

(iii) *Level of accreditation.* Recognized accrediting entities must provide accreditation at the Exchange product type level unless the product type level of accreditation is not methodologically sound. In such cases, the recognized accrediting entity must demonstrate that the Exchange product type level accreditation is not methodologically sound as a condition of the Exchange granting an exception to authorize accreditation at an aggregated level.

(iv) *Network adequacy.* The network adequacy standards for accreditation used by the recognized accrediting entities must, at a minimum, be consistent with the general requirements for network adequacy for QHP issuers codified in § 156.230(a)(2) and (a)(3).

(3) *Methodological and scoring criteria for accreditation.* Recognized accrediting entities must use transparent and rigorous methodological and scoring criteria.

(4) *Documentation.* An accrediting entity must provide the following documentation:

(i) To be recognized, an accrediting entity must provide current accreditation standards and requirements, processes, and measure specifications for performance measures to demonstrate that each entity meets the conditions described in paragraphs (c)(2), and (c)(3) of this section to HHS within 60 days of the publication date of this final rule.

(ii) Recognized accrediting entities must provide to HHS any proposed changes or updates to the accreditation standards and requirements, processes, and measure specifications for performance measures with 60 days notice prior to public notification.

(5) *Data sharing requirements between the recognized accrediting entities and Exchanges.* When authorized by an accredited QHP issuer pursuant to paragraph (a)(2) of this section, recognized accrediting entities must provide the following QHP issuer's accreditation survey data elements to the Exchange, other than personally identifiable information (as described in OMB Memorandum M–07–16), in which the issuer plans to operate one or more QHPs during the annual certification period or as changes occur to these data throughout the coverage year—the name, address, Health Insurance Oversight System (HIOS) issuer identifier, and unique accreditation identifier(s) of the QHP issuer and its accredited product line(s) and type(s) which have been released; and for each accredited product type:

(i) HIOS product identifier (if applicable);

(ii) Accreditation status, survey type, or level (if applicable);

(iii) Accreditation score;

(iv) Expiration date of accreditation; and

(v) Clinical quality measure results and adult and child CAHPS measure survey results (and corresponding expiration dates of these data) at the level specified by the Exchange.

Dated: July 16, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 16, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–17831 Filed 7–18–12; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–115; DA 12–1084]

Radio Broadcasting Services; Alberton, MT; Crystal Falls, MI; Saint Paul, AR; and Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, on its own motion, deletes four vacant allotments in various communities in Arkansas, Michigan, Montana, and Washington. These vacant allotments have been auctioned through our competitive bidding process, and are considered unsold permits that were included in Auction 93. We are deleting these vacant allotments from the FM Table, because there were no *bona fide* expressions of interest filed to retain these four vacant allotments. Deletion of these allotments may create other opportunities in nearby communities for new FM allotments or upgrades of existing stations. We conclude that the deletion of these vacant allotments could promote a more effective and efficient use of the FM broadcast spectrum. *See* Supplementary Information, *supra.*

DATES: Effective August 20, 2012.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–115, adopted July 5, 2012, and released July 6, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will not send a copy of this *Report and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

The allotment of Channel 287A at Saint Paul, Arkansas is not currently listed in the FM Table of Allotments. Channel 287A at Saint Paul, Arkansas was allotted in MM Docket No. 97–34. *See Saint Paul, Arkansas,* 62 FR 65765, published December 16, 1997. Cumulus Licensing, LLC, permittee of Station DWYAK–FM, Channel 287A, Saint Paul, Arkansas received a construction permit to operate the station on Channel 287A at Saint Paul, Arkansas. However, the Audio Division subsequently cancelled the construction permit (File No. BNPH–20041230ADG), rendering Channel 287A at Saint Paul, Arkansas a vacant allotment.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Amend § 73.202(b) Table of FM Allotments as follows:

■ a. Remove Crystal Falls, under Michigan, Channel 280C2.

■ b. Remove Alberton, under Montana, Channel 288C3.

■ c. Remove Waitsburg, under Washington, Channel 272A.

[FR Doc. 2012–17785 Filed 7–19–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 140
Friday, July 20, 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.

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Chapter XCVIII

Freedom of Information Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Proposed rule.

SUMMARY: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this proposed rule establishing its Code of Federal Regulations chapter to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA). The proposed rule describes the policies and procedures for public disclosure of information required to be disclosed under FOIA.

DATES: Submit comments on or before September 18, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: mark.jones@CIGIE.gov.*
- *Fax:* (202) 254–0162.
- *Mail:* Mark D. Jones, Executive Director, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825 Washington, DC 20006, (202) 292–2600.
- *Hand Delivery/Courier:* Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825 Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark D. Jones, Executive Director, Council of the Inspectors General on Integrity and Efficiency, (202) 292–2600.

SUPPLEMENTARY INFORMATION: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this proposed rule to provide the procedures and guidelines under which CIGIE will implement the Freedom of Information Act (FOIA) (5 U.S.C. 552). In issuing this regulation, CIGIE adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This proposed rule has not been reviewed by the Office of Management and Budget under the Executive Order since it is not a significant regulatory action within the meaning of the Executive Order. For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), CIGIE certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

List of Subjects in 5 CFR Part 9800

Appeals, Freedom of Information Act, Information, Privacy, Records.

Accordingly, as set forth in the preamble, the Council of the Inspectors General on Integrity and Efficiency is proposing to establish 5 CFR chapter XCVIII, consisting of parts 9800 through 9899, to read as follows:

Chapter XCVIII—Council of the Inspectors General on Integrity and Efficiency

PART

9800—Freedom of Information Act Regulations
9801–9899 [RESERVED]

PART 9800—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.
9800.1 Purpose.
9800.2 CIGIE organization.
9800.3 Definitions.
9800.4 General provisions.
9800.5 Public reading room.
9800.6 Requirements for making requests.
9800.7 Agency response to requests for records.
9800.8 Multitrack processing.
9800.9 General provisions respecting release of records.
9800.10 Appeals.
9800.11 Expedited processing.
9800.12 Date of receipt of requests or appeals.
9800.13 Handling commercial information obtained from a private business.
9800.14 Extension of administrative deadlines.
9800.15 Fees.
9800.16 Interest charges.
9800.17 Aggregating requests.
9800.18 Fee waivers and reductions.

Authority: Pub. L. 110–409, 122 Stat. 4302; 5 U.S.C. App; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

§ 9800.1 Purpose.

This part implements the provisions of The Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, for CIGIE records. These regulations should be read in conjunction with the FOIA, which explains in more detail requesters' rights and the records CIGIE may release. This regulation should also be read with CIGIE's FOIA Reference Guide, available on CIGIE's Web site, *http://www.ignet.gov,* and the FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines.

§ 9800.2 CIGIE organization.

(a) CIGIE has a centralized FOIA Program, with one office receiving and coordinating the processing of all requests made to CIGIE. The Integrity Committee (IC) is the single exception to CIGIE's centralized FOIA Program. For FOIA purposes, the IC is a separate entity that follows its own FOIA policies and regulations, and manages its own FOIA resources, structure and processing procedures. By statute, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the Federal Bureau of Investigation (FBI) in its Central Records System. See Title 28, CFR Part 16, Subpart A. Accordingly, the regulations published below do not apply to requests or appeals for records maintained by the IC.

(b) CIGIE will accept requests or appeals for all CIGIE records—including IC records—at official mailboxes. Requests for IC records will be forwarded to the IC for processing and direct response to the requester.

§ 9800.3 Definitions.

The following definitions apply to this part:

Appeal means a requester's written disagreement with an adverse determination under the FOIA.

CIGIE means the Council of the Inspectors General on Integrity and Efficiency and includes its predecessor agencies, the Executive Council on Integrity and Efficiency (ECIE) and the President's Council on Integrity and Efficiency (PCIE).

Confidential commercial information means records obtained by CIGIE from a business submitter that may contain information exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

Days, unless stated as ''calendar days,'' are working days and do not include Saturdays, Sundays, and Federal holidays.

Employee, for the purposes of this regulation, means any person currently or formerly holding an appointment to a position of employment with CIGIE, or any agent or independent contractor acting on behalf of or performing work for CIGIE.

FOIA Officer and *Chief FOIA Officer* are persons designated by the CIGIE Chairperson to grant or deny requests for records under FOIA.

IC means the CIGIE Integrity Committee established under section 11(d) of the Inspector General Act of 1978 (5 U.S.C. App), as amended.

Perfected request means a written FOIA request that meets all of the criteria set forth in § 1.6.

Reading room means a location where records are available for review pursuant to 5 U.S.C. 552(a)(2).

Record means a document or documentary material maintained in any form, which CIGIE:

(1) Created or received under Federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of operations or activities of CIGIE, or due to the value of the information it contains; and

(3) Controls at the time it receives a FOIA request.

Requester means any person, partnership, corporation, association, or foreign or State or local government, which has made a demand to access a CIGIE record under FOIA.

Submitter means any person or entity providing confidential commercial information to the Federal Government.

Unusual circumstances means CIGIE must:

(1) Search for or collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search, review, or duplicate a voluminous number of records in order to process a single request; or

(3) Consult with another agency or component that has a substantial interest in the determination of a request.

§ 9800.4 General provisions.

(a) CIGIE prohibits employees from releasing or disclosing confidential or otherwise non-public information that CIGIE possesses, except as authorized by this regulation or by the CIGIE Chairperson, when the disclosure is necessary for the performance of official duties.

(b) CIGIE has designated a FOIA Public Liaison to assist in the resolution of disputes between the agency and the requester. Contact information for CIGIE's FOIA Public Liaison can be found on CIGIE's Web site, *http://www.ignet.gov*.

(c) CIGIE is required to prepare an annual report regarding its FOIA activities in accordance with 5 U.S.C. 552(e). CIGIE's annual report contains information about agency FOIA requests and appeals. The annual report is posted on the CIGIE's Web site, *http://www.ignet.gov*.

§ 9800.5 Public reading room.

CIGIE maintains an electronic public reading room on its Web site, *http://www.ignet.gov*, which contains the records that the FOIA requires be regularly made available for public inspection and copying, as well as additional records of interest to the public.

§ 9800.6 Requirements for making requests.

(a) Requesters may make a request for CIGIE records by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is: *FOIASTAFF@cigie.gov*. For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The facsimile number is: (202) 254–0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's Web site, *http://www.ignet.gov*, provides additional information regarding submitting a request.

(b) Requests must be sent to the official CIGIE FOIA mailboxes that are established for the purpose of receiving requests. A request that is sent to an individual employee's mailbox or directly to a CIGIE standing committee address—other than for IC records—will not be considered a perfected request. Mailbox addresses designated to receive requests are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed request to have been received for purposes of the 20-day time limit of § 1.7 until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) Requests must be made in writing, and should contain the phrase ''FOIA Request'' on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Requests must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) A request must describe the records sought in enough detail to enable CIGIE personnel to locate them with reasonable effort. A requester should include as much specific information as possible regarding dates, titles, names of individuals, and names of agencies or other organizations that may help identify the records. Wide ranging requests that lack specificity or that contain broad descriptions of subject matters without reference to specific records, may be considered ''not reasonably described'' and therefore not subject to further processing.

(g) If CIGIE determines that a request does not reasonably describe the records, the agency will inform the requester and provide the requester with an opportunity to modify the request. The ''date of receipt'' in such cases shall be the date of receipt of the modified request.

(h) The time limit for processing the request will be tolled while any fee issue is not resolved. If CIGIE anticipates that the fees for processing the request will exceed the amount that the requester has stated he or she is willing to pay, or will amount to more than $25.00, the agency will notify the requester. In such cases, the agency will require the requester to agree in writing to pay the estimated fee.

(i) The requester must meet all of the requirements of this section in order for the request to be perfected. CIGIE will only process perfected requests.

§ 9800.7 Agency response to requests for records.

(a) With the exception of IC records, the CIGIE FOIA Officer, the Chief FOIA Officer, and persons designated by the CIGIE Chairperson are solely authorized to grant or deny any request for CIGIE records.

(b) When a request for records is submitted in accordance with § 1.6, CIGIE shall inform the requester of its determination concerning that request within 20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized under § 1.14. If CIGIE grants the request, CIGIE will inform the requester of any conditions surrounding

the granting of the request. If CIGIE grants only a portion of the request, the portion not granted will be treated as a denial. If CIGIE denies the request in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for the denial;

(2) The name and title or position of the person responsible for denial of the request;

(3) The requester's right to appeal any such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be received within 45 days of the date of the denial.

(c) If CIGIE cannot fulfill a request because the records requested are in the custody of another agency outside CIGIE, CIGIE will inform the requester and will forward the request to that agency or department for processing in accordance with this regulation.

§ 9800.8 Multitrack processing.

(a) CIGIE processes requests using a multitrack processing system. There are four processing tracks: An expedited track, if the request qualifies; a simple track for relatively simple requests; a complex track for more complex and lengthy requests; and a remanded track, when a FOIA appeal is granted.

(b) CIGIE processes requests on a ''first-in, first-out'' basis for each track, unless there are unusual circumstances as referenced in § 9800.14, or the requester is entitled to expedited processing as described in § 9800.11.

§ 9800.9 General provisions respecting release of records.

(a) CIGIE will provide the records in the form or format specified by the requester, if the records are readily reproducible in that form or format.

(b) If the request concerns documents involving a personal privacy interest or documents protected by another confidentiality statute, the requester must provide either a notarized statement or a statement signed under penalty of perjury, declaring that the requester is actually the person he or she claims to be. Original signatures are required.

§ 9800.10 Appeals.

(a) Requesters may appeal the denial of a request by writing directly to the CIGIE FOIA Officer through electronic mail, mail, delivery service, or facsimile. The electronic mail address is *FOIASTAFF@cigie.gov.* For mail or delivery service, the mailing address is: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW., Suite 825, Washington, DC 20006. The facsimile number is: (202) 254–0162. CIGIE's FOIA Reference Guide, which is available on CIGIE's Web site, *http://www.ignet.gov*, provides additional information regarding submitting an appeal.

(b) Appeals must be sent to official CIGIE FOIA mailboxes that are established for the purpose of receiving appeals. An appeal that is sent to an individual CIGIE employee's mailbox or directly to a CIGIE standing committee address—other than for IC records—will not be considered a perfected appeal. Mailbox addresses designated to receive appeals are identified in paragraph (a) of this section.

(c) CIGIE will not consider an improperly addressed appeal to have been received for purposes of the 20-day time limit of paragraph (h) of this section until it is actually received by CIGIE at one of the locations specified in paragraph (a) of this section.

(d) FOIA appeals must be in writing, and should contain the phrase ''FOIA Appeal'' on the front of the envelope or on the cover sheet of the facsimile transmittal.

(e) Appeals must include the requester's full name and a legible return address. Requesters may include other contact information as well, such as a telephone number and an electronic mail address.

(f) Requesters submitting an administrative appeal of a denial of a request for records must ensure that the appeal is received by CIGIE within 45 days of the date of the denial letter.

(g) CIGIE provides for review of appeals by an official different from the official or officials designated to make initial denials.

(h) Upon receipt of an appeal, CIGIE shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and Federal holidays), plus any extension authorized by § 9800.14. If CIGIE grants the appeal, the agency will inform the requester of any conditions surrounding the granting of the request and the approximate date the response will be in effect. If CIGIE grants only a portion of the appeal, the agency will treat the portion not granted as a denial. If CIGIE denies the appeal in whole or in part, CIGIE will inform the requester of that decision and of the following:

(1) The reason for denial;

(2) The name and title or position of the person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(i) A requester may seek judicial review under 5 U.S.C. 552(a)(4) if the denial of his or her request for records was upheld in whole or in part or if a determination respecting an appeal has not been sent within the statutory time limit in paragraph (h) of this section.

(j) A determination by the designated FOIA appeals official pertaining to CIGIE records will be final agency action.

§ 9800.11 Expedited processing.

(a) A requester may apply for expedited processing when submitting an initial request for records. Within 10 calendar days of receipt of a request for expedited processing, CIGIE will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, CIGIE will process the request as soon as practicable. If CIGIE denies a request for expedited processing, CIGIE will act expeditiously on any appeal respecting that decision.

(b) A request or appeal will be taken out of order and given expedited treatment when CIGIE determines that the requester has established one of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by an individual primarily engaged in disseminating information;

(3) The loss of substantial due process rights;

(4) A matter of widespread and exceptional media interest raising possible questions about the Federal Government's integrity which affects public confidence; or

(5) A substantial humanitarian need or interest.

(c) A requester who seeks expedited processing must include a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the reasons for requesting expedited processing. CIGIE will not consider the request for expedited processing to have been received unless accompanied by such a certified statement, and CIGIE is under no obligation to consider the request for expedited processing until it receives a certified statement.

(d) These procedures apply to requests for expedited processing of administrative appeals.

§ 9800.12 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received by the CIGIE FOIA office.

§ 9800.13 Handling commercial information obtained from a private business.

When CIGIE cannot readily determine whether the information in its records is privileged or confidential commercial information, it is CIGIE's policy to obtain and consider the views of the submitter of the information and to provide an opportunity to object to any decision prior to disclosure of the information. If CIGIE receives a request for information that has been submitted by a business, CIGIE shall:

(a) Provide the submitter of commercial information with notification of a FOIA request for that information, unless CIGIE readily determines that the information requested should not be disclosed or, alternately, that the information is not exempt from disclosure by law.

(b) Afford the submitter reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must fully explain all grounds for objecting to disclosure of any specified portion of the information. For example, if the submitter maintains that disclosure is likely to cause it substantial competitive harm, the submitter must explain on an item-by-item basis why disclosure would cause such harm. Information provided by a submitter pursuant to this part may itself be subject to disclosure under FOIA;

(c) Notify the FOIA requester of the need to inform the submitter of a request for the submitted commercial information;

(d) Determine whether the records requested are exempt from disclosure or must be released after carefully considering all reasons provided by a submitter for objecting to disclosure;

(e) Prior to the disclosure date, notify submitters of any determination to disclose such records so that the matter may be considered for possible judicial intervention; and

(f) Notify submitters promptly in all cases in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 9800.14 Extension of administrative deadlines.

In unusual circumstances, CIGIE may extend the 20 working day response time for no more than 10 additional working days for initial requests or appeals and shall notify requesters of:

(a) The reason for the extension; and

(b) The estimated date of completion.

§ 9800.15 Fees.

(a) The current schedule of fees is maintained on CIGIE's Web site, *http://www.ignet.gov.*

(b) Under FOIA, as amended, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(c) For commercial use requesters, CIGIE assesses charges which recover the full direct costs of searching for, reviewing, and duplicating the records requested. Commercial use requesters are not entitled to receive free search time or duplication referenced in paragraphs (d), (e), and (f) of this section. CIGIE may recover the cost of searching for and reviewing records for commercial use requesters even if no records are ultimately disclosed.

(1) A commercial use requester is considered to be a person who seeks information for a use or purpose that furthers a commercial, trade, or profit interest of the requester or the person on whose behalf the request is made.

(2) In order to determine whether a requester properly belongs in this category, CIGIE must consider whether the requester will put the documents to a commercial use. In cases where CIGIE has reasonable cause to doubt a requester's use of the records sought, or where that use is not clearly identified in the request itself, CIGIE may seek additional clarification from the requester.

(d) Fees for educational and non-commercial scientific institution requesters are limited to the cost of providing standard duplication services alone, without charge for the first 100 pages reproduced. To qualify for this category, requesters must show that the request made is authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term ''educational institution'' refers to preschools, public or private elementary or secondary schools, institutions of graduate or undergraduate higher education, institutions of professional education, and institutions of vocational education operating one or more programs of scholarly research.

(2) The term ''non-commercial scientific institution'' refers to an institution that is not operated on a ''commercial'' basis, and which is operated solely for the purpose of conducting scientific research.

(e) For requesters who are representatives of the news media, fees will also be limited to the cost of providing duplication services alone, without charge for the first 100 pages reproduced. No fee will be charged for providing search or review services.

(1) The term ''representative of the news media'' refers to a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term ''news'' means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) Freelance journalists may be regarded as working for a news organization if they can demonstrate a sufficient basis for expecting publication through that organization, even though not actually employed by it.

(f) Fees for all other requesters who do not fit into any of the above categories will be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request. No charge will be made to requesters in this category for the first 100 pages reproduced or for the first two hours of search time.

(g) CIGIE will assess fees for searches which fail to locate records or which locate records which are exempt from disclosure at the same rate as searches which result in disclosure of records.

(h) If a fee is incurred in connection with a request or an appeal in accordance with this section, CIGIE will inform the requester of the amount owed and the basis for the fee amount.

(i) Payment for outstanding fees incurred will be billed to the fullest extent possible at the time the requested records are forwarded to the requester. Payments must be made by requesters within 30 days of the date of the billing.

(j) In cases where the estimated fees to be charged exceed $250.00, CIGIE may require payment of the entire fee or a portion of the fee before it provides any of the requested records.

(k) CIGIE shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester declines to remit payment in advance, CIGIE may refuse to process the request or appeal with written notice to that effect provided to the requester. The ''date of receipt'' appeal for which advance payment has been required shall be the date CIGIE receives payment.

§ 9800.16 Interest charges.

For requests that result in fees assessed, CIGIE may begin levying interest charges on an unpaid bill starting on the 31' day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 9800.17 Aggregating requests.

If CIGIE reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, CIGIE may aggregate any such requests and charge accordingly.

§ 9800.18 Fee waivers and reductions.

(a) CIGIE may waive or reduce fees if disclosure of the information sought is deemed to be in the public interest. A request is made in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government, and is not primarily in the commercial interest of the requester.

(b) When determining fee waiver requests, CIGIE will consider the following six factors:

(1) The subject of the request: whether the subject of the requested records concerns the operations or activities of the Federal Government;

(2) The informative value of the information to be disclosed: whether the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) The contribution to an understanding of the subject by the public likely to result from the disclosure: Whether the disclosure will contribute to the public understanding;

(4) The significance of the contribution to the public understanding: Whether the disclosure is likely to significantly contribute to the public understanding of Federal Government operations or activities;

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the disclosure of the requested records; and

(6) The primary interest in disclosure: Whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(c) CIGIE may, in its discretion, waive or reduce fees associated with a records request, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(d) CIGIE will waive fees without discretion in all circumstances where the amount of the fee is $25.00 or less.

(e) CIGIE will notify the requester regarding whether the fee waiver has been granted. A requester may appeal a denial of a fee waiver request only after a final decision has been made on the initial FOIA request.

Dated: June 22, 2012.

Phyllis K. Fong,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

[FR Doc. 2012–16792 Filed 7–19–12; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2012–0745; Notice No. 33–12–01–SC]

Special Conditions: General Electric CT7–2E1 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the General Electric CT7–2E1 engine model. This engine model will have a novel or unusual design feature which is a combination of two existing ratings into a new rating called ''flat 30-second and 2-minute OEI'' rating. This rating is intended for the continuation of flight of a multi-engine rotorcraft after one engine becomes inoperative. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before September 18, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0745 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Donna Mihail, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7153; facsimile (781) 238–7199; email *dorina.mihail@faa.gov.* For legal questions concerning this proposed rule, contact Vincent Bennett, ANE–7 Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; email *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views to the docket. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We will consider all comments received in the docket on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On September 10, 2009, General Electric applied for an amendment to type certificate E8NE to add the new CT7–2E1 turboshaft engine model. The CT7–2E1 engine model is a derivative of the CT7 engine family certified between 1977 and 2010. It is a free turbine turbo shaft designed for a transport category twin-engine helicopter. The CT7–2E1 engine will incorporate a novel and unusual feature which is the ''flat 30-second and 2-minute OEI'' rating. The applicant requested this rating to provide the increased power required for the rotorcraft performance. A special condition is necessary to apply additional requirements for the rating's definition, overspeed, controls system, and endurance test because the applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature.

Type Certification Basis

Under the provisions of 14 CFR 21.101(a), GE must show that the model CT7–2E1 turboshaft engine meets the provisions of the applicable regulations in effect on the date of application, except as detailed in paragraphs 21.101(b) and (c). The FAA has determined the following certification basis for CT7–2E1 model turboshaft engine:

1. 14 CFR part 33, ''Airworthiness Standards: Aircraft Engines'', dated February 1, 1965, with Amendments 1 through 20 except §§ 33.5(b)(4), A33.4(b)(1), and A33.4(b)(2) Amendments 1–25 applicable to the ''flat 30-second and 2-minute OEI'' rating. The applicant will voluntarily comply with § 33.28, Amendments 1–28 for the EECU, FMU and AISBV.

2. 14 CFR part 34, Amendments 1 through 4, § 34.11 ''Standard for Fuel Venting Emissions''.

Under the provisions of 14 CFR 21.101(d), if the FAA finds that the regulations in effect on the date of the application for the change do not provide adequate standards with respect to the proposed change because of a novel or unusual design feature, the applicant must also comply with special conditions, and amendments to those special conditions, prescribed under the provisions of § 21.16, to provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

The FAA issues special conditions, as defined by 14 CFR 11.19, under 14 CFR 11.38, which become part of the type certification basis as specified in §§ 21.17(a)(2) or 21.101(d).

Special conditions are initially applicable to the engine model for which they are issued. If the type certificate for that model is amended later to include another related model that incorporates the same or similar novel or unusual design feature, or if any other model already included on the same type certificate is modified to incorporate the same or similar novel or unusual design feature, the special conditions may also apply to the other model.

Novel or Unusual Design Features

The CT7–2E1 turboshaft engine will incorporate a ''flat 30-second and 2-minute OEI'' rating, for use after the failure or shutdown of one engine, and for up to three periods of 2.5 minutes each on any one flight. Special conditions for the ''flat 30-second and 2-minute OEI'' rating are proposed to address this novel and unusual design feature. The special conditions are discussed below.

Discussion

The ''flat 30-second and 2-minute OEI'' rating is equivalent in some regards with the 2½ min OEI rating and in other regards with the 30-second OEI and the 2-minute OEI ratings. However, the proposed rating differs from the 2½ minute OEI rating because it limits the number of occurrences per flight and mandates post-flight inspection and maintenance actions. The proposed rating is similar with the combined or joined 30-second OEI and 2-minute OEI ratings when they are equal. However, the existing standards are not adequate for this combination.

Similarly with the ''flat 30-second and 2-minute OEI'' rating, the 30-second and 2-minute OEI ratings were introduced to provide multi-engine rotorcraft with high power for short periods of time when an engine becomes inoperative during critical flight conditions. Existing airworthiness standards for the 30-second OEI and 2-minute OEI ratings were established based on the assumption that the two ratings will be selected together as a package, and that the 30-second OEI rating is higher than the 2-minute OEI rating. Because the 30-second OEI rating was assumed higher, specific requirements were established for only this rating and for the 30 seconds time period. When the 30-second and 2-minute OEI ratings are equal, these requirements must be extended to a total period of 2.5 minutes.

We identified the special conditions discussed below, that are based on a combination of existing regulations for the 2½ minute OEI rating on one hand, and the 30-second and 2-minute OEI ratings on the other. Under the provisions of § 21.101(d) the special conditions must provide a level of safety equal to that established by the regulations in effect on the date of the application for the change. The FAA determined that the type certification basis for CT7–2E1 engine model is up to and including Amendment 20 of part 33. We also determined that the part 33 standards up to and including Amendment 25 contain part of the standards for the ''flat 30-second and 2-minute OEI''. Therefore, we will not use special conditions when the requirements exist in later amendments, and instead we will apply these later amendments; refer to the above section titled ''Type Certification Basis''. These standards are (1) Section A33.4, Airworthiness Limitations Section, paragraphs (b)(1) and (b)(2) Amendments 1–25, and (2) Section 33.5 Instruction manual for installing and operating the engine, paragraph (b)(4) Amendments 1–25.

The special conditions are in addition to the requirements of the 30-second and 2-minute OEI ratings that remain applicable to the ''flat 30-second and 2-minute OEI'' rating, as follows:

- The special conditions extend the standards applicable to the 30-second OEI or 2-minute OEI for the 2.5 minutes time duration of the ''flat 30-second and 2-minute OEI'' rating. We propose special conditions by revising the time dependent requirements of §§ 33.27, 33.87(a)(7), and 33.88(c). The 2.5 minutes time duration for the proposed rating would affect the engine structural and operational characteristics that are time dependent, such as the values for transients, time duration for stabilization to steady state, and part growth due to deformation. In addition, we propose special conditions to extend the 30-second OEI rating requirements of § 33.67(d) for automatic availability

and control of the engine power, from 30 seconds to 2.5 minutes. FAA proposes special conditions based on § 33.28(k) requirements of amendment 33–26, which are the same as those of § 33.67(d) amendment 33–18.

• Special conditions are required to account for the proposed rating of 2.5 minutes time duration during the endurance test conduct. For the 30-second and 2-minute OEI the test schedule of § 33.87(f) is divided among the two ratings.

We propose special conditions by revising the requirements of § 33.87(f) to ensure the test will be run for 2.5 minutes duration with no interruption.

Applicability

As discussed above, these special conditions are applicable to GE's CT7–2E1 turboshaft engines. If GE applies later for a change to the type certificate to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, providing the certification basis is the same or contains later amendments that satisfy the certification basis discussed in the section titled ''Type Certification Basis''.

Conclusion

This action affects only certain novel or unusual design features on the CT7–2E1 turboshaft engine. It is not a rule of general applicability, and it applies only to GE, who requested FAA approval of this engine feature.

List of Subjects in 14 CFR part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for GE CT7–2E1 turboshaft engine.

1. Part 1 Definitions

Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies to this special condition: ''Rated flat 30-second and 2-minute One Engine Inoperative (OEI) Power,'' with respect to rotorcraft turbine engines, means (1) a rating for which the shaft horsepower and associated operating limitations of the 30-second OEI and 2-minute OEI ratings are equal, and (2) the shaft horsepower is that developed under static conditions at the altitude and temperature for the hot day, and within the operating limitations established under part 33. The rating is for continuation of flight operation after the failure or shutdown of one engine in multiengine rotorcraft, for up to three periods of use no longer than 2.5 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

2. Part 33 Requirements

(a) In addition to the airworthiness standards in the type certification basis applicable to the engine and the 30-second and 2-minute OEI ratings, the special conditions in this section apply.

(b) Section 33.7 Engine ratings and operating limitations. Flat 30-second and 2-minute OEI rating and operating limitations are established by power, torque, rotational speed, gas temperature, and time duration.

(c) Section 33.27. Turbine, compressor, fan, and turbosupercharger rotor overspeed. The requirements applicable to 2½ minute OEI rating, except that following the test, the rotor may not exhibit conditions such as cracking or distortion which preclude continued safe operation.

(d) Section 33.28 Engine controls systems. Must incorporate a means, or a provision for a means, for automatic availability and automatic control of the flat 30-second and 2-minute OEI power for the duration of 2.5 minutes and within the declared operating limitations.

(e) Section 33.87 Endurance test. The requirements applicable to 30-second and 2-minute OEI rating, except for:

(1) The test of § 33.87(a)(7) as applicable to the 2½ minute OEI rating. Note to paragraph (e)(1): For the purpose of temperature stabilization, the test period time is 2.5 minutes.

(2) The tests in § 33.87(f)(2) and (3) must be run continuously for the duration of 2.5 minutes, and

(3) The tests in § 33.87(f)(6) and (7) must be run continuously for the duration of 2.5 minutes.

(f) Section 33.88 Engine overtemperature test. The requirements of § 33.88(c) except that the test time is 5 minutes instead of 4 minutes.

Issued in Burlington, Massachusetts, on June 28, 2012.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–17560 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 122

[EPA–HQ–OW–2011–0188; FRL–9693–5]

RIN 2040–AF22

National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Withdrawal.

SUMMARY: On October 21, 2011, the EPA proposed a rulemaking to improve and restore water quality by collecting certain information about concentrated animal feeding operations (CAFOs). The EPA also solicited comments on improving water quality by promoting environmental stewardship and compliance rather than collecting facility-specific information. The EPA is withdrawing the proposal to collect CAFO information by rule. Instead, the EPA, where appropriate, will collect CAFO information using existing sources of information, including state NPDES programs, other regulations, and other programs at the federal, state, and local level. The EPA believes, at this time, it is more appropriate to obtain CAFO information by working with federal, state, and local partners instead of requiring CAFO information to be submitted pursuant to a rule. Today's withdrawal does not preclude the Agency from initiating the same or similar rulemaking at a future date.

ADDRESSES: *Docket:* 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Becky

Mitschele, Water Permits Division, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–6418; fax number: (202) 564–6384; email address: *mitschele.becky@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
A. What entities are potentially interested in this action?
B. Legal Authority
II. Background
III. Summary of Comments Received
IV. The EPA's Considerations Since Proposal
V. The EPA's Rationale for Withdrawal of the Proposed Rule
VI. Impact Analysis
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I. General Information

A. What entities are potentially interested in this final action?

Entities potentially interested in this final action include animal feeding operations (AFOs), including AFOs that are CAFOs as defined in the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR 122.23(b)(2), pursuant to section 502(14) of the Clean Water Act (CWA). An AFO is a CAFO if it meets the regulatory definition of a Large or Medium CAFO (40 CFR 122.23(b)(4) or (6)) or has been designated as a CAFO (40 CFR 122.23(c)) by an authorized state or by the EPA. The following table provides the size thresholds for Large, Medium, and Small CAFOs in each animal sector.

TABLE 1—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature dairy cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150.
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system)	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system)	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system)	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system)	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

Notes:

[1] May be designated or must meet one of the following two criteria to be defined as a Medium CAFO: (1) Discharges pollutants through a man-made device; or (2) directly discharges pollutants into waters of the United States which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).

[2] Not a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

This table is not intended to be exhaustive. It provides a guide for entities likely to be interested in today's action. If you have questions regarding this action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Legal Authority

This action withdraws the proposed NPDES CAFO Reporting Rule. 76 FR 65431, October 21, 2011. Today's final action is issued pursuant to sections 301, 304, 305, 308, 309, 402, 501, and 504 of the CWA (33 U.S.C. 1311, 1314, 1315, 1318, 1319, 1342, 1361, and 1364).

II. Background

A core provision of the CWA is the NPDES permit program which authorizes and regulates the discharge of pollutants from point sources to waters of the United States. 33 U.S.C. 1342. Section 502(14) of the CWA includes ''concentrated animal feeding operation'' (CAFO) in the definition of ''point source.'' The EPA initially issued national effluent guidelines and standards (ELGs) for feedlots on February 14, 1974, and NPDES CAFO regulations on March 18, 1976. 39 FR 5704, February 14, 1974; 41 FR 11458, March 18, 1976.

In 2008, the EPA issued revised NPDES permitting regulations for CAFOs. 73 FR 70418, November 20, 2008. Subsequently, environmental groups and industry filed petitions for review of the 2008 rule, which were consolidated in the U.S. Court of Appeals for the Fifth Circuit. On May 25, 2010, the EPA signed a settlement agreement with the environmental petitioners in which the EPA committed to propose a rule, pursuant to CWA section 308, 33 U.S.C. 1318, to require all owners or operators of CAFOs to submit certain information to the EPA.

On October 21, 2011, the EPA proposed a rulemaking that contained regulatory options for obtaining specified information from CAFOs to support the EPA in meeting its water quality protection responsibilities under the CWA. The EPA solicited comment on the additional items listed in the settlement agreement that the Agency did not propose to collect. The EPA also requested comment on three alternative approaches to improve water quality including: Collecting data from existing sources, requiring states to submit the information to the EPA, and expanding the EPA's network of compliance assistance and outreach tools. The **Federal Register** notice contains detailed descriptions and a discussion of each option proposed. 76 FR 65431, October 21, 2011.

In the settlement agreement, the EPA committed to take final action on the proposal by July 13, 2012. The settlement agreement does not commit the EPA to any particular final action. The settlement agreement expressly states that nothing in the agreement shall be construed to limit or modify the discretion accorded the EPA by the CWA or by general principles of administrative law. Today's final action fulfills the Agency's commitments per the settlement agreement with the petitioners.

III. Summary of Comments Received

The comment period for the proposed rule ended on January 19, 2012, and the EPA received 1,403 comment letters. The commenters on the proposed rule included, among others, states, state associations, industry organizations, environmental advocacy groups, and individuals. The public comments and the EPA's supporting documents are

available in Docket EPA–HQ–OW–2011–0188.

Generally, state and state association commenters questioned the need for new regulations in light of states already having the information the EPA was seeking by virtue of existing CAFO programs at the state and local level. Industry commenters opposed the proposed rule arguing, among other things, that much of the data had already been submitted to the states and the EPA and that the information could be collected through means other than a rule. Environmental advocacy groups commented in support of the proposed rule and argued that the EPA should collect more than the five items of information proposed. Individual comments ranged from opposition of the proposed rule to support of the proposed rule. Individuals who opposed the proposal commented that it would be too burdensome for CAFOs to comply with the proposed rule. Individuals who supported the proposal commented that the proposed rule is necessary to implement the CAFO program and that more information than proposed should be collected from CAFOs.

IV. The EPA's Considerations Since Proposal

Since the EPA proposed the rulemaking on October 21, 2011, the EPA conducted a preliminary evaluation of information publicly available on the Internet from all state permitting authorities, expanding on the effort the Agency conducted prior to proposal. Prior to proposal, the EPA evaluated a subset of existing state programs and identified publicly accessible site-specific information for CAFOs. That information informed the EPA's decision to develop the voluntary state submission process and the alternative approach that relies on existing data sources in the proposed NPDES CAFO Reporting Rule. 76 FR 65437, October 21, 2011. The docket contains examples of CAFO site-specific information that is publicly available on the Internet.

The EPA's post-proposal evaluation of available information included a review of 37 state permitting authority Web sites to determine if information about CAFOs is accessible online. The EPA notes that although, at present, there are 47 states authorized to implement the NPDES program, a number of those states either have no CAFOs or are not authorized to implement the CAFO portion of the NPDES program. In states where the EPA administers the NPDES program for CAFOs, the EPA has information for CAFOs with NPDES permit coverage from permit applications or notices of intent. The review of the 37 state permitting Web sites yielded information on 7,473 operations that confine animals. Some of the information includes operations that are not federally defined as CAFOs or operations that are required under state law to have state non-NPDES permits. The EPA compiled these results into a summary report, which can be found in the docket.

In July 2012, the EPA also established a Memorandum of Understanding (MOU) with the Association of the Clean Water Administrators (ACWA) that specifically will assist the Agency in collecting information about CAFOs. ACWA is an independent, nonpartisan, non-profit corporation of state and interstate water program managers. The EPA believes cooperation with the states will assist the EPA in obtaining needed CAFO information. This collaborative effort between the EPA and ACWA will focus on identifying CAFOs and assist the EPA in obtaining pertinent information about CAFOs on a state-by-state basis.

V. The EPA's Rationale for Withdrawal of the Proposed Rule

In today's final action, the EPA has chosen not to promulgate a regulation. Instead, the EPA is pursuing an approach that relies on a range of existing sources of information, other regulations, and other programs at the federal, state, and local level to gather basic information about CAFOs. The EPA believes at this time it is more appropriate to obtain CAFO information from existing sources. Some states commented that they have the information proposed to be collected by the rule and expressed interest in working with the EPA to exchange that information. Since the EPA has established relationships with states, as well as the U.S. Department of Agriculture (USDA), U.S. Geological Survey (USGS), and other federal partners, the EPA believes that working through existing partnerships will yield timely and useful results in obtaining much of the needed CAFO information. In developing animal agricultural programs since the 2003 CAFO rule, states have longstanding relationships with owners and operators of operations that confine animals. These relationships will facilitate information sharing between relevant stakeholders.

CAFOs play an important role in water quality planning, due to the fact that they are potential sources of nitrogen, phosphorus, pathogens, and other pollutants. The EPA continues to believe that the gathering and evaluating of information about CAFOs can assist local, state, and federal governments, regulated entities, interest groups, and the public in making more informed decisions toward meeting the objective of the CWA to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). EPA explained how information about CAFOs would assist in implementation of CWA programs in the proposed rule. 76 FR 65436, October 21, 2011. Through the approach outlined in this notice, the EPA will seek to collect CAFO information items listed in the proposed rule, as well as other information that is available from existing resources, which includes continuing to work with USDA, USGS, and other agencies to address sources of nutrient pollution.

Based on the comments received, the EPA believes that it can obtain much of the desired CAFO information from federal agencies, states, and other existing data sources. The EPA noted in the proposal that the existing NPDES permitting program requires CAFOs with NPDES permit coverage to submit information as part of the application process as well as in annual reports. 76 FR 65439, October 21, 2011. Pursuant to 40 CFR 122.21(i), information on a CAFO permit application must include the following: (1) Name of the owner or operator, (2) facility location and mailing address, (3) latitude and longitude of the production area (entrance of the production area), (4) a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, (5) specific information about the number and type of animals, whether in open confinement or housed under roof, (6) the type of containment and storage and total capacity for manure, litter, or process wastewater, (7) the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater, (8) estimated amounts of manure, litter, and process wastewater generated per year, (9) estimated amounts of manure, litter, and process wastewater transferred to other persons per year, and (10) a nutrient management plan that at a minimum satisfies the requirements specified in 40 CFR 122.42(e), including, for all CAFOs subject to the effluent limitations and standards, the requirements of 40 CFR 412.4(c), as applicable. Also, pursuant to 40 CFR 123.24(b)(3), a memorandum of agreement between State Directors and the Regional Administrators specifies the frequency and content of reports, documents, and other

information which the state is required to submit to the EPA. States are required to allow the EPA to routinely review state records, reports, and files relevant to the administration and enforcement of the approved program. See also 40 CFR 123.41, 40 CFR 123.43. Because these two provisions are part of the NPDES program, the EPA believes, at this time, NPDES authorized states have basic information from the permit application for at least those CAFOs with NPDES permit coverage, and that states will share that information with the EPA. In states where the EPA administers the NPDES program for CAFOs, the EPA has information for CAFOs with NPDES permit coverage from permit applications or notices of intent.

The EPA believes an efficient approach that does not duplicate efforts is the appropriate next step to collecting CAFO information. Thus, the EPA believes that before determining whether to issue a rule requiring CAFOs to submit information, the Agency should obtain existing information from federal agencies, states, local partners, and other resources that already collect data. This decision also recognizes that many CAFOs have provided their information to some governmental entity, although perhaps not to the EPA. While the EPA may not be the entity that received the information initially, it is reasonable at this time for the EPA to work with its federal, state, and local partners to obtain existing information rather than asking CAFOs to re-submit information that they have already submitted to another governmental entity. Collecting existing information, evaluating it, and compiling it in one format will better inform the Agency of what additional information may be needed and the best way to collect that information, if necessary.

Continued implementation of the permitting program for CAFOs likely will result in improvements in data tracking and availability and analysis of CAFO information. For example, some states with established programs have comprehensive data on CAFOs. The EPA described existing data sources in the proposed CAFO Reporting Rule, of which state permitting authorities are just one source. In addition to working with the state permitting authorities to exchange information mainly on CAFOs with NPDES permit coverage, the EPA may need to use other existing sources of data to obtain information about CAFOs without NPDES permit coverage. The EPA acknowledges some states will have information about CAFOs without NPDES permit coverage through other state programs, such as state operating permits. To fill in information gaps, the Agency may use existing tools, such as site visits and individual information collection requests.

At this time, the EPA has concluded that working with USDA and states, who maintain direct relationships with CAFO owners or operators is an effective approach to obtaining CAFO information that will minimize the burden on states and CAFOs.

VI. Impact Analysis

Because the EPA is not promulgating a regulatory reporting requirement, there are no compliance costs or impacts associated with today's final action.

VII. Statutory and Executive Order Reviews

Today's action does not establish new regulatory requirements. Hence, the requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (e.g., the Unfunded Mandate Reform Act) do not apply to this action.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 13, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–17772 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0343; FRL–9701–8]

Approval and Promulgation of Air Quality Implementation Plan; Alabama; Disapproval of 110(a)(2)(E)(ii) Infrastructure Requirement for the 1997 Annual and 2006 24-Hour $PM_{2.5}$ Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a portion of the State Implementation Plan (SIP) submissions, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on July 25, 2008, and on September 23, 2009, to demonstrate that the State meets requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Specifically, EPA is proposing to disapprove sub-element 110(a)(2)(E)(ii) that requires the State to comply with section 128 of the CAA. EPA is taking a separate action to address all the other infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before August 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0343 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–2012–0343, 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–2012–0343.'' 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: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

I. What action is EPA proposing in today's rulemaking?
II. What is the background for this proposed action?
III. What is EPA's analysis of Alabama's submission for section 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What action is EPA proposing in today's rulemaking?

On July 25, 2008, and on September 23, 2009, the State of Alabama, through ADEM, provided submissions to EPA certifying that the Alabama SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.[1] Specifically, Alabama certified that its current SIP adequately addresses the elements of CAA section 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(E)(ii) requires that states comply with the requirements respecting state boards pursuant to section 128 of the Act. In today's action, EPA is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions related to the requirements respecting state boards for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because EPA has made the preliminary determination that these submissions do not meet the requirements of section 110(a)(2)(E)(ii) of the CAA for this NAAQS. EPA's rationale for this proposed disapproval is provided in the Section III of this rulemaking.

II. What is the background for this proposed action?

On July 18, 1997 (62 FR 38652), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m^3. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*see* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a federal implementation plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k).

[1] Alabama's July 25, 2008, and September 23, 2009, submissions explained that Alabama's current SIP sufficiently addresses requirements of section 110(a)(2) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, however, today's proposed action only relates to the section 110(a)(2)(E)(ii) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is addressing the other section 110(a)(2) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in relation to Alabama's SIP in rulemaking separate from today's proposed rulemaking.

Alabama's infrastructure submissions were received by EPA on July 25, 2008, for the 1997 annual $PM_{2.5}$ NAAQS, and on September 23, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on January 25, 2009, and March 23, 2010, respectively. Alabama was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP revision related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Alabama 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP revision addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C), the nonattainment area requirements and section 110(a)(2)(D)(i), interstate transport requirements, by September 30, 2012.

Today's action is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions which was intended to meet the requirement to address sub-element 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

III. What is EPA's analysis of Alabama's submission for section 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS?

On July 25, 2008, and on September 23, 2009, the State of Alabama, through ADEM, provided letters to EPA certifying that Alabama's SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Specifically, for sub-element 110(a)(2)(E)(ii) Alabama's July 25, 2008, submission states that ''Requirements dictating the roles of local or regional governments (local programs) are derived from Ala Code § 22–28–11 (2006 Rplc.Vol), as amended * * *'' and the September 23, 2009, submission states that ''This requirement is met through Ala Code § 22–22A–6(j) which ensures that the state comply with section 128 of the CAA.''

Section 110(a)(2)(E)(ii) requires that each implementation plan provide that states comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 requires that: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. After reviewing Alabama's SIP, EPA has made the preliminary determination that the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's July 25, 2008, and on September 23, 2009, submissions do not meet the requirements of the Act. While Alabama has state statutes that may address, in whole or part, requirements related to state boards at the state level, these provisions are not included in the SIP as required by the CAA.

Based on an evaluation of the federally-approved Alabama SIP, EPA is proposing to disapprove Alabama's certification that its SIP meets the requirements of 110(a)(2)(E)(ii) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The submitted provisions which purport to address 110(a)(2)(E)(ii) are severable from the other infrastructure elements. Therefore, EPA is proposing to disapprove those provisions which relate only to sub-element 110(a)(2)(E)(ii).

IV. Proposed Action

EPA is proposing to disapprove the portion of Alabama's July 25, 2008, and September 23, 2009, submissions, relating to section 110(a)(2)(E)(ii). This proposed disapproval is based on EPA's preliminary determination that Alabama's SIP does not satisfy these requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because provisions required by section 128 of the CAA are not approved in the Alabama SIP. Today's proposed action only relates to the section 110(a)(2)(E)(ii) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is addressing the other section 110(a)(2) requirements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for Alabama's SIP in a rulemaking separate from today's proposed rulemaking.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. Section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

V. 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 act on state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866, Regulatory Planning and 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 the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain state requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, 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 as defined by the Small Business Administration's regulations at

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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 of the CAA will not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

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, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

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 is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

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 (NTTAA)

Section 12(d) of the NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs 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. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under section 110 the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, and

Reporting and recordkeeping requirements.

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

Dated: July 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–17768 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0140; FRL–9702–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; the 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the Maryland State Implementation Plan (SIP) revision submitted by the State of Maryland, through the Maryland Department of the Environment (MDE), on April 3, 2008. The emissions inventory is part of the Maryland April 3, 2008 SIP revision that was submitted to meet nonattainment requirements related to Maryland's portion of the Washington DC-MD-VA nonattainment area (hereafter referred to as Maryland Area or Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 20, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0140 by one of the following methods:

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

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0140, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0140. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of SIP Revision
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 18, 1997 (62 FR 38652), EPA established the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

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. In 1999, EPA and state air-quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS and, by January 2001, established a complete set of air-quality monitors. 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 2001–03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) at 70 FR 944. As a result of this supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Maryland Area which is the subject of this rulemaking was included in the list of areas not attaining the 1997 $PM_{2.5}$ NAAQS. The Maryland Area consists of the following counties in Maryland: Charles, Frederick, Montgomery and Prince Georges.

On January 12, 2009 (74 FR 1146), EPA determined that Maryland had attained the 1997 $PM_{2.5}$ NAAQS in the Maryland Area. That determination was based upon quality assured, quality controlled and certified ambient air monitoring data that showed the Area had monitored attainment of the 1997 $PM_{2.5}$ NAAQS for the 2004–2006 monitoring period and that continued to show attainment of the 1997 $PM_{2.5}$ NAAQS based on 2005–2007 data. The

January 12, 2009 determination suspended the requirements for Maryland to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 $PM_{2.5}$ NAAQS. On March 5, 2012, MDE submitted a request for withdrawal of the Maryland 1997 $PM_{2.5}$ SIP revisions including the withdrawal of the attainment plan, analysis of reasonably available control measures, attainment demonstration, contingency plans and mobile source budgets. To meet the requirements of CAA section 172(c)(3), Maryland did not request the withdrawal of the 2002 base year emission inventory portion of the 1997 $PM_{2.5}$ SIP revisions. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by MDE on April 3, 2008 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by MDE. The year 2002 was selected by MDE as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in Appendix B of the April 3, 2008 SIP submittal.

Table 1, below, provides a summary of the annual 2002 emissions of NO_X, VOCs, $PM_{2.5}$, PM_{10}, NH_3 and SO_2 which were included in the Maryland submittal.

TABLE 1—EMISSIONS OF POLLUTANTS IN TONS PER YEAR (TPY)

Pollutant	NO_X	VOCs	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Emissions (TPY)	109,041.17	98,626.04	12,825.42	30,826.06	5,174.36	169,788.65

The CAA section 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 Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The 2002 emissions inventory was based on data developed by the MDE Air and Radiation Management Administration (MDE–ARMA), the Maryland Department of Transportation (MDOT), the Metropolitan Washington Council of Government (MWCOG), and EPA for biogenic sources. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' August 2005. EPA preliminarily agrees that the process used to develop this inventory and the emissions inventory is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories. More information regarding the review of the base year inventory can be found in the technical support document (TSD) titled ''2002 SIP Base Year Inventory'' that is located in this docket.

III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the State of Maryland through MDE on April 3, 2008. We have made the preliminary determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the $PM_{2.5}$ 2002 base year emissions inventory portion of the Maryland SIP, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 10, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–17770 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2230–01]

RIN 0648–BC03

Snapper-Grouper Fishery Off the Southern Atlantic States; Snapper-Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes this proposed rule to implement a regulatory amendment (Regulatory Amendment 12) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would modify the golden tilefish annual catch limit (ACL), which would be equal to the optimum yield (OY), as well as revise the recreational accountability measures (AMs) for golden tilefish in the South Atlantic exclusive economic zone (EEZ). The intent of this rule is to modify management measures for golden tilefish in the commercial and recreational sectors in the South Atlantic based on new stock assessment analyses.

DATES: Written comments on this proposed rule must be received on or before August 20, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2012–0087'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: 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. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0087'' in the search field and click on ''search.'' After you locate the document ''Snapper-Grouper Fishery off the Southern Atlantic States; Snapper-Grouper Management Measures,'' click the ''Submit a Comment'' link in that row. This will display the comment Web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of documents supporting this proposed rule including an environmental assessment, initial regulatory flexibility analysis (IRFA), regulatory impact review, and fishery impact statement may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305, or email: *Karla.Gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and the regional fishery management councils to prevent overfishing, to achieve (on a continuing basis) the OY from federally managed fish stocks, and to rebuild stocks that have been determined to be overfished. These mandates ensure management of fishery resources for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. Reauthorization of the Magnuson-Stevens Act in 2007 required implementation of new tools to help end and prevent overfishing to achieve the OY from a fishery. The tools are ACLs and AMs.

An ACL is the level of annual catch of a stock that, if met or exceeded, triggers some corrective action through AMs. The AMs are management controls to prevent exceeding the ACLs and to correct for overages of ACLs if they occur. An AM might be an in-season closure if catch approaches the ACL, or it may require reducing the ACL for the following fishing year because of an overage that occurred during the previous fishing year. ACLs may not exceed the overfishing limit (OFL) and the acceptable biological catch (ABC). The OFL is an estimate of the catch level above which overfishing is occurring and may come from a stock assessment. The ABC is defined as the level of a stock's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and is based on the Council's ABC control rule.

Management Measures Contained in This Proposed Rule

This proposed rule, if implemented, would modify the ACL for golden tilefish. In 2011, ACLs and AMs were implemented for golden tilefish through the Amendment 17B to the FMP (75 FR 82280, December 30, 2010). Since then, golden tilefish have been assessed through the Southeast Data, Assessment, and Review (SEDAR) process using data through 2010. The stock assessment for golden tilefish indicated that the South Atlantic population is not overfished nor undergoing overfishing. Results from the recent stock assessment (SEDAR 25 2011) suggest that the current South Atlantic golden tilefish ACL (326,554 lb (148,122 kg), round weight, or 291,566 lb (132,252 kg), gutted weight), can be increased. The current South Atlantic golden tilefish commercial ACL is 316,757 lb (143,679 kg), round weight, or 282,819 lb (128,285 kg), gutted weight; and the recreational ACL is 1,578 fish. If implemented, the commercial and recreational ACLs for golden tilefish in the South Atlantic would be set at the yield associated with 75 percent fishing mortality that will produce the maximum sustainable yield (MSY) while the population is at equilibrium. Therefore, this proposed rule would

increase the current South Atlantic golden tilefish ACL to 625,000 lb (283,495 kg), round weight, or 558,036 lb (253,121 kg), gutted weight. The ACLs would continue to be split using the existing recreational (3 percent) and commercial (97 percent) sector allocation. Therefore, if implemented, this proposed rule would set the South Atlantic golden tilefish commercial ACL equal to 606,250 lb (274,990 kg), round weight, or 541,295 lb (245,527 kg), gutted weight, and the recreational ACL equal to 3,019 fish. The ACLs would be set at this level to ensure there is a buffer between the ACLs and ABC (668,000 lb (303,000 kg), round weight, or 596,429 lb (270,536 kg), gutted weight) to account for management uncertainty. Equilibrium values represent the yield expected, on average, over a long period from a given management strategy. Using the estimated equilibrium values as a catch limit is a risk-averse approach that sacrifices some yield over the short-term to gain stability over the long-term and prevent unrealistic expectations of fishery potential by constituents.

This proposed rule would also modify the AMs for the golden tilefish recreational sector of the snapper-grouper fishery. If recreational landings for golden tilefish meet, or are projected to meet the recreational ACL, NMFS will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. Additionally, if the ACL is exceeded, the current recreational AMs for golden tilefish use a 3-year running average to determine if the length of the following fishing season needs to be reduced to ensure that the ACL is not exceeded in the following year. The 3-year running average could be heavily influenced by a single year's anomalously high or low landings, which may or may not be due to actual increases in harvest or statistical variation. This proposed rule would eliminate the 3-year running average and use landings in a single year instead to reduce the risk of implementing overly conservative AMs when they are not needed.

Management Measures Contained in Regulatory Amendment 12

Additionally, Regulatory Amendment 12 revises OY for golden tilefish and would establish the ACL equal to the OY and equal to the yield at 75 percent of the fishing mortality at MSY when the population is at equilibrium.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, Regulatory Amendment 12, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The proposed rule would not introduce any changes to current reporting, record-keeping, and other compliance requirements in the golden tilefish segment of the snapper-grouper fishery.

NMFS expects the proposed rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

A total of 142 vessels using hook-and-line gear and 38 vessels using longline gear landed golden tilefish in any one year during 2005–2010. Vessels using hook-and-line gear landed an annual average of about 27,000 lb (12,247 kg), gutted weight, of golden tilefish and 220,000 lb (99,790 kg), gutted weight, of other snapper-grouper species. Gross revenues of these vessels annually averaged $76,000 (2010 dollars) from golden tilefish and $567,000 (2010 dollars) from other snapper-grouper species. For 2005–2010, vessels using longline gear landed an annual average of about 298,000 lb (135,172 kg), gutted weight, of golden tilefish and 153,000 lb (69,400 kg), gutted weight, of other snapper-grouper species. For this period, their revenues annually averaged $802,000 from golden tilefish and $286,000 from other snapper-grouper species. On average, vessels using hook-and-line gear depended on other snapper-grouper species for a majority of their revenues while vessels using longline gear depended on golden tilefish as their major source of revenues. Obviously, some vessels using hook-and-line gear could be expected to be more dependent on golden tilefish as a major source of revenues. Similarly, some vessels using longline gear could be more dependent on other snapper-grouper species as a major source of revenues. These vessels, using hook-and-line or longline gear, are assumed to comprise the universe of commercial vessels directly affected by actions in this regulatory amendment, including the ACL alternatives. It is possible that, with the proposed ACL increase, other commercial vessels may enter or re-enter the golden tilefish portion of the snapper-grouper fishery, but it is not reasonably possible to determine how many vessels would do so.

Based on revenue information, all commercial vessels affected by the proposed action can be considered small entities.

From 2005–2010, an annual average of 1,985 vessels had valid permits to operate in the snapper-grouper for-hire sector, of which 85 are estimated to have operated as headboats. The for-hire fleet consists of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (2010 dollars) is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding revenue estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the proposed action can be considered small entities.

Some fleet activity, *i.e.,* multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors to an unknown extent, and all vessels are considered as independent entities in this analysis.

NMFS expects the proposed rule to directly affect all federally permitted commercial vessels harvesting golden tilefish and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that the proposed action would affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the actions in this proposed rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

Given that the current commercial AM is maintained, the proposed ACL increase would result in revenue increases to the commercial vessels. It is also expected that such revenue increases would lead to profit increases, although the magnitude of profit increases cannot be estimated based on available information.

The recreational sector has exceeded its ACL in recent years. In 2011, this sector exceeded its ACL by more than 500 percent. The proposed ACL increase would not be enough to compensate for the expected overages in the recreational sector. Hence, with the proposed in-season and post-season AM for the recreational sector, the for-hire entities may be expected to experience profit reductions even with the proposed ACL increase. The magnitude of such profit reduction cannot be estimated based on available information.

Because the commercial sector harvests much more golden tilefish than the recreational sector, receiving 97 percent of the combined ACL, it is likely that the profit increases to the commercial sector would cumulatively outweigh the profit decreases to the for-hire sector. NMFS expects that the proposed ACL increase would yield positive net profit to small entities that participate in the golden tilefish segment of the snapper-grouper fishery.

Five alternatives, including the preferred alternative, were considered for revising the ACL and OY for golden tilefish. The first alternative, the no action alternative, would maintain the existing ACL, which is equal to OY and OY equal to 75 percent of the fishing mortality at MSY. This is not a viable alternative because, based on updated biomass information, it would result in an ACL that is greater than the ABC recommended by the Council's SSC. The second alternative would set the ACL equal to OY and OY equal to ABC. Due to its larger ACL, this alternative would result in larger short-term revenue and profit increases to commercial vessels than the preferred alternative. For the same reason, it would also result in better fishing opportunities and possibly higher profits to for-hire vessels than the preferred alternative. However, this alternative poses some risks, largely absent in the preferred alternative, of pushing the stock to an overfished level—fishery managers can overshoot the equilibrium biomass target, which could result in the population biomass dropping below both target and limit levels. In addition, this alternative provides for declining ACLs over time, which would tend to invite controversy especially when the stock is abundant and not overfished. On the other hand, the preferred alternative would provide for stable harvest levels over time that, although lower than those of the second alternative, would still be substantially higher than current levels. The third alternative would set the ACL equal to the OY and the OY equal to 90 percent of the ABC. The fourth alternative would set the ACL equal to the OY and the OY equal to 80 percent of the ABC. These two other alternatives would provide for lower ACLs than the preferred alternative, and thus lower economic benefits as well.

Four alternatives, including the preferred alternative, were considered for revising the recreational AMs for golden tilefish. The first alternative, the no action alternative, is a post-season AM and employs a 3-year averaging method for determining ACL overages. Without an in-season AM, this alternative would not be as effective as the preferred alternative in preventing overages in the recreational sector. In addition, given the relatively large recreational harvests in recent years, the 3-year averaging method for determining ACL overages could potentially trigger the application of the AM even if no overages occurred in the current year. This would result in short-term reductions in profits and might also delay the benefits that would accrue from increasing the sector's ACL. The second alternative would specify a recreational sector AM trigger and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector AM trigger, thus possibly limiting adverse effects on the profits of small entities. However, it would not provide for a measurable index in addressing the overages in the recreational sector. The third alternative would specify a recreational sector in-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would not specify a recreational sector in-season AM. This sub-alternative would likely result in higher profits to small entities than the preferred sub-alternative. However, it would not address the overages in the recreational sector that would eventually result in more restrictive regulations and larger reductions in the profits of small entities. The fourth alternative would specify a recreational sector post-season AM and includes two sub-alternatives, including the preferred sub-alternative. The first sub-alternative would specify a recreational sector post-season AM in terms of paybacks for the prior year's overages if golden tilefish were overfished. This sub-alternative would likely result in larger profit reductions to small entities than the preferred sub-alternative. Moreover, this sub-alternative would be unnecessary because golden tilefish is not overfished.

In this regulatory amendment, the Council considered four alternatives for a commercial sector ACT for which the no action alternative is the preferred alternative. The other alternatives would set a commercial ACT equal to 90 percent, 75 percent, or 50 percent of ACL. If the Council had decided to use the ACT to close the commercial harvest and prohibit the sale of golden tilefish, these other alternatives would likely result in larger profit reductions to small entities than the preferred alternative.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 17, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, Performing the Functions and Duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.42, paragraph (e)(2) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(2) *Golden tilefish*—541,295 lb (245,527 kg).

* * * * *

3. In § 622.49, the heading for § 622.49 is revised, and paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 622.49 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) * * *

(1) * * *

(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.42(e)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(ii) *Recreational sector.* If recreational landings for golden tilefish, as estimated by the SRD, meet or are projected to meet the recreational ACL of 3,019 fish, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. If recreational landings for golden tilefish, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year.

* * * * *

[FR Doc. 2012–17750 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 140
Friday, July 20, 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 16, 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) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) requires the Federal Crop Insurance Corporation (FCIC) to publish regulation on how FCIC will provide a final agency determination in response to certain inquiries. Consistent with section 506(r) of the Act and 7 CFR part 400, subpart X in accordance with the Federal Crop Insurance Act, as amended, FCIC revised section 20 of the Common Crop Insurance Policy Basic Provisions, published at 7 CFR 457.8, to require the FCIC to provide interpretations of policy provisions and procedures (handbooks, manuals, memoranda, and bulletins) when any dispute in mediation, arbitration, or litigation requires interpretation of a policy provision or procedure.

Need and Use of the Information: FCIC will use the requester's name and address to provide a response. Federal crop insurance is a national program with all producers receiving the same policy for the same crop and insurance providers are required to use procedures issued by FCIC in the service and adjustment of such policies to ensure that all producers are treated alike and none receive special benefits or treatment because of the crop they produce, the insurance provider that insures them, or who hears their disputes. FCIC issued Manager's Bulletin MGR–05–018 on October 7, 2005, to provide the criteria for requesting an interpretation of procedure to inquire about the meaning or applicability of procedure. The requirements for this collection are necessary for FCIC to provide an interpretation of statutory and regulatory provisions upon request. If the requested information is not collected with each submission, FCIC would not be able to comply with the statutory mandates.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 95.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 805.

Risk Management Agency

Title: Risk Management and Crop Insurance Education; Request for Applications.

OMB Control Number: 0563–0067.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C., Chapter 36, Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. FCIC operating through the Risk Management Agency (RMA) has two application programs to carry out certain risk management education provisions of the Federal Crop Insurance Act. The two educational programs requiring application are: To establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program; and to provide agricultural producers with training opportunities in risk management with a priority given to producers of specialty crops and underserved commodities. Funds are available to fund parties willing to assist RMA in carrying out local and regional risk management can crop insurance education programs.

Need and Use of the Information: Applicants are required to submit a completed application package in hard copy to RMA. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding. For applicants that are selected, the information will be used to create the terms of cooperative agreements between the applicant and the agency and will not be shared outside of RMA.

Description of Respondents: Not-for-profit institutions; business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 220.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,188.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. 2012–17678 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0047]

Monsanto Company and KWS SAAT AG; Determination of Nonregulated Status of Sugar Beet Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that sugar beet genetically engineered for tolerance to the herbicide glyphosate, designated as H7-1, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company and KWS SAAT AG in its petition for a determination of nonregulated status, our analysis of publically available scientific data, and comments received from the public on the petition for nonregulated status and its associated environmental impact statement and plant pest risk assessment. This notice also announces the availability of our written determination and record of decision.

DATES: *Effective Date:* July 20, 2012.

ADDRESSES: You may read the documents referenced in this notice and any comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0047.*

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca L. Stankiewicz Gabel, Senior Environmental Protection Specialist, Environmental Risk Analysis Programs, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1238; (301) 851–3927. To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to APHIS seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On October 19, 2004, APHIS published a notice in the **Federal Register** (69 FR 61466–61467, Docket No. 04–075–1) announcing receipt of a petition from the Monsanto Company (Monsanto) and KWS SAAT AG (KWS) requesting a determination of nonregulated status under 7 CFR part 340 of sugar beet (*Beta vulgaris* ssp. *vulgaris*) designated as event H7-1, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition stated that this article should not be regulated by APHIS because it does not present a plant pest risk. APHIS also announced in that notice the availability of a draft environmental assessment (EA) for the proposed determination of nonregulated status.

Following review of public comments and completion of the EA, we published another notice in the **Federal Register** on March 17, 2005 (70 FR 13007–13008, Docket No. 04–075–2), advising the public of our determination, effective March 4, 2005, that the Monsanto/KWS sugar beet event H7-1 was no longer considered a regulated article under APHIS regulations in 7 CFR part 340.

On September 21, 2009, the U.S. District Court for the Northern District of California issued a ruling in a lawsuit challenging APHIS' determination of nonregulated status of sugar beet event H7-1, finding that APHIS should have completed an environmental impact statement (EIS) prior to making a determination of nonregulated status of sugar beet event H7-1. On May 28, 2010 (75 FR 29969–29972, Docket No. APHIS–2010–0047), we subsequently published a notice of intent to prepare an EIS and proposed scope of study.

National Environmental Policy Act and Record of Decision

To provide the public with documentation of APHIS' review and analysis of the potential environmental impacts of sugar beet event H7-1 and interrelated socioeconomic impacts associated with a determination of nonregulated status of sugar beet event H7-1, an EIS has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

A notice of availability regarding the draft EIS was published by the Environmental Protection Agency (EPA) in the **Federal Register** on October 14, 2011 (76 FR 63922, Docket No. ER–FRL–8999–5), and a notice of availability regarding the final EIS was published by EPA in the **Federal Register** on June 8, 2012 (77 FR 34041–34042, Docket No. ER–FRL–9003–4). The NEPA implementing regulations in 40 CFR 1506.10 require a minimum 30-day waiting period between the time the notice of availability of a final EIS is published and the time an agency makes a decision on an action covered by the EIS. APHIS has reviewed the final EIS and evaluated the comments received during the 30-day waiting period and has concluded that it has fully and appropriately analyzed the issues covered by the final EIS and those comments. Based on our final EIS, the response to public comments, and other pertinent scientific data, APHIS has prepared a record of decision for the final EIS.

Determination of Nonregulated Status

Based on APHIS' analysis of field and laboratory data submitted by Monsanto/KWS, references provided in the petition, peer-reviewed publications, information analyzed in the EIS, the plant pest risk assessment, comments provided by the public, and APHIS' evaluation of and response to those comments, APHIS has determined that sugar beet event H7-1 is unlikely to pose a plant pest risk and, in fact, is not a plant pest. Accordingly, the petition requesting a determination of nonregulated status is approved, and sugar beet event H7-1 is no longer subject to our regulations governing the

introduction of certain genetically engineered organisms and to the plant pest provisions of the Plant Protection Act.

Copies of the determination of nonregulated status document and the record of decision, as well as copies of the final plant pest risk assessment and final EIS upon which the determination and record of decision were based, are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Done in Washington, DC, this 18th day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–17819 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Montana, Telegraph Vegetation Project

AGENCY: Forest Service, USDA.

ACTION: Corrected NOI.

SUMMARY: On November 12, 2009, a Notice of Intent (NOI) to prepare an environmental impact statement called the Telegraph Vegetation Project was published in the 74 FR 58239. This NOI is hereby corrected due to a change in the proposed action (FSH 1909.15 Chapter 20, 22.2).

New to the proposed action is the addition of approximately 449 acres of slashing generally small diameter trees followed by prescribed burning within the Jericho Mountain Inventoried Roadless Area.

The Helena National Forest will still prepare an environmental impact statement for the Telegraph Vegetation Project to manage vegetation actions in the Little Blackfoot drainage west of the Continental Divide. The purpose and need for action remains the same as in the original NOI, which is to be responsive to the mountain pine beetle outbreak in this area by recovering economic value of dead and dying trees, promoting desirable regeneration, reducing fuels and the risk of wildfire, and maintaining diverse wildlife habitats.

DATES: Comments concerning the scope of the analysis must be received by August 20, 2012. The draft environmental impact statement is expected Feb 2013 and the final environmental impact statement is expected July 2013.

ADDRESSES: Send written comments to Scott Johnson, Helena National Forest, 2880 Skyway Dr., Helena, MT 59602. Comments may also be sent via email to *comments-northern-helena@fs.fed.us,* or via facsimile to 406–449–5436. Please indicate ''Telegraph Scoping'' on the subject line.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

FOR FURTHER INFORMATION CONTACT: Scott Johnson at 406–495–3795.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Wide-scale tree mortality has occurred throughout the project area due to the mountain pine beetle. Treatment is needed to ensure diverse and sustainable forest stands and to lessen the risks of wildfire which could threaten wildland urban interface areas. The project focuses on reducing hazardous fuels, establishing healthy regeneration, and recovering the economic value of dead trees. In addition, aspen and whitebark pine can be promoted with treatment. The project also seeks to maintain or improve watershed values.

Proposed Action

Approximately 6,666 acres are proposed for treatment. Roughly 1,750 acres are young stands that established after past harvest and are in need of thinning to ensure they reach viable maturity. The remaining acres are primarily mature stands of lodgepole pine with some Douglas-fir, Engelmann spruce, and subalpine fir with high mountain pine beetle mortality. These acres would be treated using a combination of improvement cuts, regeneration harvests, thinning, and prescribed fire. Post treatment activities would include approximately 4,064 acres of underburning, site prep, broadcast burning, jackpot burning, and hand piling/burning. Approximately 449 acres of slashing generally small diameter trees followed by prescribed burning would occur within the Jericho Mountain Inventoried Roadless Area. Up to 8 miles of temporary road construction and approximately 78 miles of road reconstruction/maintenance would be necessary to implement the proposed action.

A site specific forest plan amendment may be needed related to forest plan standards for hiding cover, open road densities during hunting season, and thermal cover.

Responsible Official

Helena National Forest Supervisor.

Nature of Decision To Be Made

The decisions to be made include: Whether to implement the proposed action or an alternative to the proposed action, what monitoring requirements would be appropriate to evaluate the implementation of this project, and whether a forest plan amendment would be necessary as a result of the decision for this project.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In July 2012, a scoping package will be mailed, an open house will be scheduled, and Web site information will be posted. The comments received from the initial scoping period in November 2009 will still be considered when analyzing issues and developing alternatives. They will be retained in the project record.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Comments received in response to this solicitation, including names, addresses, email addresses, and phone numbers of those who comment, will be part of the public record and will be available for inspection. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: July 13, 2012.

Kevin T. Riordan,

Forest Supervisor.

[FR Doc. 2012–17759 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Suspension of Public Comment Period and Notice of Intent To Prepare Supplemental Draft Environmental Impact Statement: North Fork Eagle Creek Wells Special Use Authorization

AGENCY: Forest Service, USDA.

ACTION: Suspension of comment period/corrected notice of intent.

SUMMARY: The USDA Forest Service, Lincoln National Forest, is suspending the public comment period for a Draft Environmental Impact Statement (DEIS) for the North Fork Eagle Creek Wells Special Use Authorization. As a result of the Little Bear Fire occurring in the project area, a supplemental DEIS will be prepared considering changed circumstances. The supplemental DEIS will disclose potential impacts of a proposed action to authorize, under a new special use permit, the operation of four municipal supply water wells located on National Forest System (NFS) land in the North Fork Eagle Creek drainage. The new permit would be authorized for up to 20 years, with stipulations for frequent review and verification of the permit terms and conditions. These could occur as often as every year but would occur at least every 5 to 10 years. The new authorization would add terms and conditions to the permit reflecting adaptive management strategies, which respond both to the purpose and need for action as well as to mitigate potential adverse impacts to surface water and groundwater resources from well operations. The Environmental Protection Agency (EPA) published a notice of availability (NOA) of the DEIS in the **Federal Register** on May 25, 2012 [77–31355; EIS No. 20120161]. The NOA provided for a public comment period ending on July 9, 2012.

DATES: Due to extenuating circumstances caused by the Little Bear wildland fire, a supplemental DEIS will be prepared considering changed circumstances in the project area. At this time there is no formal notice and comment period that will provide the commenter appeal rights, but comments on these changed circumstances are encouraged to aid completion of the supplemental DEIS and will be most beneficial if received by September 7, 2012. Comments from all parties received or postmarked after September 7, 2012 will be considered to the extent practicable. Once completed, the DEIS and supplemental DEIS will be released for a formal 45-day public comment period and notice of the comment period will be advertised.

ADDRESSES: Copies of the DEIS are available for public review at the following locations:

* *Lincoln National Forest Supervisor's Office:* 3463 Las Palomas Road, Alamogordo, New Mexico.

* *Smokey Bear Ranger District:* 901 Mechem Drive, Ruidoso, New Mexico.

Written comments are best submitted electronically by accessing *http://www.fs.fed.us/nepa/fs-usda-pop.php?project=9603.* To electronically comment, select *'Comment on Project'* in the *'Get Connected'* box on the right side of Web page.

Written comments may also be submitted to: Robert G. Trujillo, Forest Supervisor, Lincoln National Forest, 3463 Las Palomas Rd, Alamogordo, NM 88310, or facsimile 575–434–7218. Oral comments can be provided at the Responsible Official's office during normal business hours (8:00 a.m.–4:30 p.m. Monday through Friday, excluding holidays), via telephone 575–434–7200, or in person.

FOR FURTHER INFORMATION CONTACT: Debbie McGlothlin, Environmental Coordinator, TEAMS Enterprise Unit, at 559–920–4952.

Dated: July 16, 2012.

Robert G. Trujillo,

Forest Supervisor.

[FR Doc. 2012–17695 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Arapaho and Roosevelt National Forests and Pawnee National Grassland; Boulder and Gilpin County, CO; Eldora Mountain Resort Ski Area Projects; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** of July 6, 2012, concerning the notice of intent to prepare an environmental impact statement. The document contained incorrect information pertaining to a component of the proposed action.

FOR FURTHER INFORMATION CONTACT: Eldora EIS NEPA Contractor, Travis Beck, (970) 668–3398 ext. 103.

Correction

In the **Federal Register** of July 6, 2012, in FR Doc. 2012–16300, on page 39987, in the second column, correct the **DATES** caption to read:

''Comments concerning the scope of the analysis must be received by August 31, 2012. The draft environmental impact statement is expected to be available for public review in June 2013 and the final environmental impact statement is expected in April 2014.''

In the **Federal Register** of July 6, 2012, in FR Doc. 2012–16300, on page 39987, in the third column, correct the first paragraph under the Proposed Action Heading to read:

The project area includes 615 acres of National Forest System (NFS) lands and 435 acres of private lands. The Forest Service only maintains jurisdiction over NFS lands; however, to fulfill its obligations under the National Environmental Policy Act (NEPA) the Forest Service will analyze the entire project area for direct, indirect and cumulative effects. The proposed projects would add approximately 70 acres of traditional terrain and include approximately 70 acres of gladed terrain projects. Much of the traditional terrain construction will require tree removal for the area of the trails, approximating 70 acres of removal, although a more accurate quantity of tree removal will be disclosed in the EIS as all proposed trails may not necessitate complete tree removal. Each project component is discussed below and shown on the enclosed Eldora Mountain Resort Ski Area Projects map. Additional detail can be viewed at *www.EldoraEIS.com.*

In the **Federal Register** of July 6, 2012, in FR Doc. 2012–16300, on page 39988, in the first column, correct numbers 4 through 6 under the Proposed Action Heading to read:

4. Jolly Jug Lift and Trails—Install a new four or six-person chairlift and construct four new Intermediate trails (approximately 20 acres of terrain) and approximately 10 acres of Intermediate ability level glades. A Forest Plan amendment would be required to adjust the SUP boundary to include approximately 16 acres of the southern portion of the Jolly Jug Pod.

5. Snowmaking—Expand snowmaking coverage to include all new traditional trails (not in any of the gladed areas) totaling approximately 70 acres.

6. Roads and Utilities—Build new road spurs and install utilities to construct and maintain the following proposed lifts and facilities: Placer Express Lift, Jolly Jug Lift, Challenge Lift, The Lookout Facility, and Challenge Mountain Facility. Proposed Mountain Access Roads are depicted by black dashed lines on the attached Eldora Mountain Resort Ski Area Projects map. The existing snowmaking infrastructure would deliver drinking water to The Lookout and Challenge Mountain facilities, as is the current method for The Lookout Facility. On-site septic systems would accommodate sewage deposal for the proposed Lookout Facility and Challenge Mountain Facility.

Dated: July 12, 2012.

Sylvia Clark,

District Ranger, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Boulder.

[FR Doc. 2012–17452 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee (LTFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Federal Advisory Committee will hold a meeting on August 9, 2012 at the Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held August 9, 2012, beginning at 9:00 a.m. and ending at 12:00 p.m.

ADDRESSES: Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150.

For Further Information or To Request an Accommodation Contact: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda: (1) An update on the status of science funding in the Lake Tahoe Basin, and (2) public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: July 16, 2012.

Nancy J. Gibson,

Forest Supervisor.

[FR Doc. 2012–17764 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Kootenai National Forest, Forest Service, USDA.

ACTION: Notice of New Fee Sites.

SUMMARY: The Kootenai National Forest is proposing to charge fees for the overnight rental of Fairview cabin ($50), Meadow Peak lookout ($40), and Minton Peak lookout ($40). These cabins have not been available for recreation use prior to this date. Rental of other cabins on the Kootenai National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of these cabins. This fee is only proposed and will be determined upon further analysis and public comment.

DATES: Send any comments about these fee proposals by September 1, 2012, so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. Fairview will become available for recreation rental December 2012, Meadow peak and Minton Peak lookouts will become available for recreation rental June 2013.

ADDRESSES: Forest Supervisor, Kootenai National Forest, 31374 US Highway 2, Libby, MT 59923–3022.

FOR FURTHER INFORMATION CONTACT: Mary Laws, Recreation Fee Coordinator, 406–283–7648

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Kootenai National Forest currently has twelve other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of the three new cabins has shown that people desire having this sort of recreation experience on the Kootenai National Forest. A market analysis indicates that the $35–80/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent these cabins will need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: June 15, 2012.

Paul Bradford,

Kootenai National Forest Supervisor.

[FR Doc. 2012–17687 Filed 7–19–12; 8:45 am]

BILLING CODE 3410–11–M

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: Economic Development Administration (EDA).

Title: Award Amendment Requests and Project Service Maps.

OMB Control Number: 0610–0102.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 632 (600 requests for amendments to construction awards, 30 requests for amendments to non-construction awards, 2 project service maps).

Average Hours Per Response: 2 hours for an amendment to a construction award, 1 hour for an amendment to a non-construction award, 6 hours for a project service map.

Burden Hours: 1,242.

Needs and Uses: A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a) of EDA's regulations). EDA may require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see CFR 302.16(c) of EDA's regulations).

The type of documentation varies by the amendment requested. For example, a change to the approved schedule may require documentation substantiating claims that weather caused delays, or labor shortages caused delays, or environmental issues unknown at the time of award caused delays. The explanation may require why the change is in the best interest of both the government and the recipient and what

impact the change will have on project outcomes. Also, a budget request may require documentation showing that materials were more expensive than originally budgeted and substitutes were not available. Upon receiving an amendment request, the EDA engineer/construction manager assigned to the project will evaluate the request and determine what type of documentation is required. The EDA engineer/construction manager will then communicate this to the recipient.

Affected Public: Current recipients of EDA assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes; and (7) (for training, research, and technical assistance awards only) individuals and for profit businesses.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

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 Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov*.

Dated: July 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17669 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–34–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: Economic Development Administration (EDA).

Title: Property Management.

OMB Control Number: 0610–0103.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 150.

Average Hours Per Response: 2 hours and 45 minutes.

Burden Hours: 413.

Needs and Uses: A recipient must submit a written request for EDA's approval to undertake an incidental use of property acquired or improved with EDA investment assistance (see 13 CFR 314.3 of EDA regulations). This collection of information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. An incidental use of property: (1) Does not interfere with the scope of the project or the economic purpose for which the investment was made; (2) provided that the recipient is in compliance with applicable law and the terms and conditions of the investment assistance, and (3) the incidental use of the property will not violate the terms and conditions of the investment assistance or otherwise adversely affect the economic useful life of the property. Eligible applicants and recipients should contact the appropriate regional office (whose contact information is available via the Internet at *http://www.eda.gov*) for guidelines on obtaining approval for incidental use of property. If a recipient wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA and disclose the intended future use of the real property or the tangible personal property for which the release is requested (see 13 CFR 314.10 of EDA's regulations). This collection of information allows EDA to determine whether to release its real property or tangible personal property interests.

Affected Public: Current or past recipients of EDA construction (Public Works or Economic Adjustment) assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

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 Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: July 17, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17670 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828, A–557–809, A–565–801]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce and the U.S. International Trade Commission that revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings (butt-weld pipe fittings) from Italy, Malaysia, and the Philippines would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department of Commerce is publishing a notice of continuation of these antidumping duty orders.

DATES: *Effective Date:* July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue NW., Washington, DC 20230; telephone: (202) 482–3362 and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2001, the Department of Commerce (the Department) published the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines.[1] On November 1, 2011, the Department published a notice of initiation of its second five-year (sunset) reviews of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines.[2]

As a result of these sunset reviews, the Department determined that revocation of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines would likely lead to continuation or recurrence of dumping and, therefore, notified the U.S. International Trade Commission (Commission) of the magnitude of the margins likely to prevail should these orders be revoked.[3]

On July 5, 2012, the Commission published its determination in the **Federal Register**, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

For purposes of the orders, the product covered is certain stainless steel butt-weld pipe fittings (butt-weld fittings). Butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the orders are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (e.g., DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the orders.

The orders do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the orders are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next sunset reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: July 11, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–17769 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 67412 (November 1, 2011) (*Initiation Notice*).

[3] *See Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: Final Results of the Expedited Second Five-Year (''Sunset'') Reviews of Antidumping Duty* Orders, 77 FR 14002 (March 8, 2012) and accompanying Issues and Decision Memorandum.

[4] *See Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines,* 77 FR 39735 (July 5, 2012), and USITC Publication 4225 (June 2012), titled *Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines (Investigation Nos. 731–TA–865–867 (Second Review)).*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC114

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Reef Fish Advisory Panel.

DATES: The meeting will convene at 8:30 a.m. on Monday, August 6, 2012 and conclude by 5 p.m. on Tuesday, August 7, 2012.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Reef Fish Advisory Panel (AP) will review several amendments that the Council is developing. Amendments for which the Council will take final action at its upcoming meeting in August include a Generic Amendment for Dealer Permits and Electronic Reporting, and Reef Fish Amendment 38 to modify the post-season accountability measures for shallow-water grouper and revise the generic framework procedure for establishing regulatory actions. Amendments for which the Council will review public hearing drafts at its upcoming meeting include Reef Fish Amendment 37 to revise the gray triggerfish rebuilding plan, and a framework action to provide a recreational split season for gag in 2013 and modify or eliminate the fixed closed season of February through March on

recreational shallow-water grouper harvest. In other actions, the AP will review a scoping document for a possible amendment to designate petroleum platforms and artificial reefs as essential fish habitat. The AP will also reconsider its recommendations from an October 2011 meeting on vermilion snapper annual catch limits in light of revised analysis and new acceptable biological catch recommendations from the Scientific and Statistical Committee. In addition, the AP will review updated information on fish venting and recompression, and may consider recommendations for changes to the current regulations requiring possession and use of venting tools when fishing for reef fish.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–17682 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC115

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Council to convene public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on a proposed generic amendment addressing Federal seafood dealer permits.

DATES: The public hearings will be held from August 6–9, 2012 at nine locations throughout the Gulf of Mexico. The public hearings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public hearings will be held in the following locations: Tampa, Key West and Panama City, FL; Houma, LA; Biloxi, MS; Mobile, AL; Brownsville, Galveston and Corpus Christi, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist-Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630 x235.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene Public Hearings on a proposed generic amendment addressing Federal seafood dealer permits. A seafood dealer is the person who first receives fish by way of purchase, barter, or trade. Seafood dealers buy product from commercial fishermen and sell directly to restaurants, markets, other dealers, processors, or consumers without substantially altering the product. NOAA Fisheries Service issues Federal dealer permits on an annual basis to those individuals or organizations that wish to become a seafood dealer. The Gulf Council is considering changes the current permit and reporting requirements for those individuals or organizations that purchase species managed by the Gulf of Mexico and South Atlantic Councils to ensure landings of managed fish stocks are recorded accurately and in a timely manner so annual catch limits are not exceeded. Modification of fishery management plans would affect species managed solely by the Gulf of Mexico Council or the South Atlantic Councils, as well as species managed by both Councils.

The nine public hearings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Monday, August 6, 2012

Hilton Tampa Airport Westshore Hotel, 2225 N. Lois Avenue, Tampa, FL 33607, telephone: (813) 877–6688;

Lady Anderson/Captain Anderson Marina, 5550 N. Lagoon Drive, Panama City Beach, FL 32408; telephone: (850) 234–3435.

Tuesday, August 7, 2012

Courtyard Marriott, 3955 N. Expressway 77/83, Brownsville, TX 78520, telephone: (956) 350–4600;

Courtyard Marriott, 1000 W. I–65 Service Road South, Mobile, AL 36609, telephone: (251) 344–5200.

Wednesday, August 8, 2012

Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040, telephone: (305) 295–5000;

Courtyard Marriott D'Iberville, 11471 Cinema Drive, D'Iberville, MS 39540, telephone: (228) 392–1200;

Omni Corpus Christi, 900 N. Shoreline Boulevard, Corpus Christi, TX 78401, telephone: (361) 887–1600.

Thursday, August 9, 2012

Hilton Galveston, 5400 Seawall Boulevard, Galveston Island, TX 77551, telephone: (409) 744–5000; and

Courtyard Marriott, 142 Library Drive, Houma, LA 70360, telephone: (985) 223–8996.

Copies of the scoping documents can be obtained by calling (813) 348–1630 or by visiting the Council's Web site at *www.gulfcouncil.org.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–17683 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC116

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee and Advisory Panel, in August, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 8, 2012 at 9 a.m.

ADDRESSES: This meeting will be held at the Courtyard by Marriott, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569–5250; fax: (617) 561–0971.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee and Advisory Panel will review the range of alternatives for Amendment 6 prepared by the Plan Development Team. This will be the first of at least two meetings to finalize measures for approval by the Councils to be considered in the Amendment 6 DEIS. As such, this meeting will focus on potential modifications to the current days-at-sea (DAS) management system, including alternatives to enable DAS leasing, and on approaches to integrate monkfish into the sector management program of the Northeast Multispecies Fishery. The Committee will also discuss and provide guidance to the PDT for the next phase of plan development.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–17684 Filed 7–19–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/20/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/18/2012 (77 FR 29596) and 5/25/2012 (77 FR 31335–31336), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Striking Tools

NSN: 5120–00–NIB–0001—Hammer—2 lb, Engineer's, 16″ Fiberglass Handle
NSN: 5120–00–NIB–0002—Hammer—3 lb, Engineer's, 16″ Fiberglass Handle
NSN: 5120–00–NIB–0003—Hammer—4 lb, Engineer's, 16″ Fiberglass Handle
NSN: 5120–00–NIB–0004—Hammer—3 lb, Drilling, 10.5″ Fiberglass Handle
NSN: 5120–00–NIB–0005—Hammer—4 lb, Drilling, 10.5″ Fiberglass Handle
NSN: 5120–00–NIB–0006—Axe—3.5 lb, Michigan Style, Single Bit, 36″ Fiberglass Handle
NSN: 5120–00–NIB–0007—Axe—3.5 lb, Michigan Style, Double Bit, 36″ Fiberglass Handle
NSN: 5120–00–NIB–0008—Hammer—16 lb, Sledge, Double Faced, 36″ Fiberglass Handle
NSN: 5120–00–NIB–0010—Hammer—20 lb, Sledge, Double Faced, 36″ Fiberglass Handle
NSN: 5120–00–NIB–0011—Splitting Maul—6 lb, Sledge Eye, 36″ Fiberglass Handle
NSN: 5120–00–NIB–0012—Splitting Maul—8 lb, Sledge Eye, 36″ Fiberglass Handle
NSN:: Keystone Vocational Services, Inc., Sharon, PA
Contracting Activity: General Services Administration, Kansas City, MO

Extreme Cold Weather Sleeping Bag (ECW)

NSN: 8415–MD–001–0270—Module, Extreme Cold Weather Sleeping Bag (ECW M) U.S. Marine Corps, One size fits all
NSN: 8415–MD–001–0267—Bag, Sleeping, Outer, Extreme Cold Weather (ECW OSB) U.S. Marine Corps, One size fits all
NSN:: ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA
Coverage: C–List for 100% of the requirement of the U.S. Marine Corps, as aggregated by the Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick MA.

Comments were received from a small business apparel manufacturer contractor and a law firm on behalf of another apparel manufacturer contractor. Through the comments, the

contractors oppose adding this product to the Procurement List. The first contractor is a small business that produces similar items for the Department of Defense (DoD), and stated its sales to DoD have dropped significantly. This contractor believes that the loss of opportunities for small business will result in a reduced supply base for DoD. The second contractor is a small HUBZone certified concern located in an area with high unemployment. This contractor also manufactures similar products, comprising the majority of its sales, for DoD, and subcontracts/purchases supplies from other small business concerns in the area. The firm stated it has a relationship with a local agency that provides services for people with severe disabilities where the contractor subcontracts some work to the agency and has designed, built and donated machinery to the agency. The contractor indicates that it would pursue this opportunity if available through a competitive procurement.

In considering whether to add products or services to the Procurement List, the Committee operates in accordance with applicable statutes and regulations. By regulation, the Committee considers whether the addition is likely to have a severe adverse impact on the current contractor. In this instance, both contractors submitting comments confirm that they are not current contractors, that they only manufacture similar products. The product at issue in this addition is a new product developed with full cooperation of the contracting activity, which demonstrates that the supply base issue was considered. The Committee does not view the loss of the opportunity to bid on new work to constitute severe financial impact, as there is no guarantee that a particular offeror would be successful. Accordingly, it is appropriate that the Committee consider this product for addition to the Procurement List.

NSN: 1670–01–598–5067—Containerized Unitized Bulk Equipment (CUBE) Lifeliner, Water Kit
NSN: 1670–01–598–5071—Containerized Unitized Bulk Equipment (CUBE) Lifeliner, Fuel Kit
NPA: Peckham Vocational Industries, Inc., Lansing, MI
Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA
Coverage: C–List for 100% of the requirement of the Department of the Army, as aggregated by the Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick MA.

Services

Service Type/Location: Laundry Service, Veterans Administration Medical Center (VAMC), (offsite: 1809 W 2nd Avenue, Indianola, IA), 601 Highway 6 West, Iowa City, IA
NPA: Genesis Development, Jefferson, IA
Contracting Activity: Department of Veterans Affairs, Nebraska Western-Iowa Health Care System, Omaha, NE
Service Type/Location: Laundry and Dry Cleaning Service, Buckley AFB Lodging & Medical Facilities, Buckley AFB, CO
NPA: Goodwill Industrial Services Corporation, Colorado Springs, CO
Contracting Activity: Dept. of the Air Force, FA2543 460 CONS LGC, Buckley AFB, CO

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–17706 Filed 7–19–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: August 20, 2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 8455–00–NIB–0007—Neck Lanyard, Cord Style, Swivel Hook, Black, 36″ x .25″
NSN: 8455–00–NIB–0020—Neck Lanyard, Cord Style, Shielded Cardholder, Black, 36″ x .25″
NSN: 8455–00–NIB–0021—Neck Lanyard, Strap Style, Swivel Hook, Black, 36″ x .75″
NSN: 8455–00–NIB–0022—Neck Lanyard, Strap Style, Clip, Black, 36″ x .75″
NSN: 8455–00–NIB–0023—Neck Lanyard, Strap Style, Retractable Reel, Black, 36″ x .75″
NSN: 8455–00–NIB–0024—Neck Lanyard, Strap Style, Key Ring, Black, 36″ x .75″
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: 8455–00–NIB–0005—Neck Lanyard, Cord Style, Clip, Black, 36″ x .25″
NSN: 8455–00–NIB–0031—Identification Card Holder, Opaque, 2.375″ x 3.5″
Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.
NPA: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: General Services Administration, Fort Worth, TX

Privacy Filters With Frames

NSN: 7045–00–NIB–0377—17.0″
NSN: 7045–00–NIB–0378—19.0″
NSN: 7045–00–NIB–0389—22.0″ Widescreen

NSN: 7045–00–NIB–0390—19.0″ Widescreen
NSN: 7045–00–NIB–0391—24.0″ Widescreen
NPA: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Service

Service Type/Location: Custodial/Janitorial Services, Vancouver US Armed Forces Reserve Center (AFRC)/WA070, 15005 NE 65th Street, Vancouver, WA.
NPA: Portland Habilitation Center, Inc., Portland, OR
Contracting Activity: Dept of the Army, W6QM MICC–ARCC North, Fort McCoy, WI

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–17707 Filed 7–19–12; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–C0007]

Battat Incorporated, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Battat Incorporated, containing a civil penalty of $400,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 6, 2012.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12–C0007, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sarah C. Wang, General Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7807.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 17, 2012.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. In accordance with 16 CFR 1118.20, Battat Incorporated (''Battat'' or the ''Firm'') and staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act (''CPSA''). The Agreement and the incorporated attached Order resolve Staff's allegations set forth below.

The Parties

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Battat is a privately-held company, organized and existing under the laws of the state of Delaware, with its principal office located at 1560 Military Turnpike, Plattsburgh, New York, 12901.

Staff Allegations

4. Between August 2004 and February 2008, Battat distributed approximately 132,000 Magnabild magnetic building sets (''Subject Products'') in U.S. commerce. On January 23, 2008, Battat announced a recall for the Subject Products bearing model numbers BB1431H and BB1502H. On March 13, 2008, Battat announced a recall for the Subject Products bearing model numbers BB1439H and BAT–34. The Subject Products sold for approximately $20—$40 through online and nationwide retailers.

5. The Subject Products are ''consumer products'' and, at all relevant times, Battat was a ''distributor'' of these consumer products, which were ''distribute[d] in commerce,'' as those terms are defined or used in sections 3(a)(5), (7), and (8) of the CPSA, 15 U.S.C. 2052(a)(5), (7), and (8).

6. The Subject Products, which are labeled for ages three and up, are defective because small, powerful magnets can loosen and fall out of the components with normal use. Magnets found by young children can be swallowed or aspirated. If more than one magnet is swallowed, the magnets can attract each other and cause intestinal perforations or blockages, which can be fatal.

7. Battat received its first complaint of magnets coming loose from the Subject Products in October 2005.

8. By March 31, 2006, Battat had received seven consumer reports of magnet liberation and two consumer reports of children ingesting non-magnetized steel balls. Some consumers described multiple magnet liberations from the Subject Products.

9. On March 31, 2006, the Commission announced the recall of Rose Art Magnetix Building Sets, which involved one death, four serious injuries, and 34 incidents involving small magnets.

10. In April 2006, Battat received two additional consumer complaints of magnet liberation. Battat has represented to the Commission that, ''At some point, likely April or May [2006], Battat became aware of the Magnetix recall and only then became aware of the possibility that small magnets could cause intestinal injury.''

11. Between November 2006 and July 2007, the Commission re-announced the Rose Art Magnetix Building Sets recall due to additional serious injuries to children; the Commission issued a ''Magnet Safety Alert,'' warning parents of the risk of serious injury and death to children from magnet ingestion; and the Commission announced five separate recalls for several million toys containing magnets due to the potential for magnet liberation.

12. Despite being aware of the danger posed to children by the ingestion of magnets such as those in the Subject Products, and with full awareness that the CPSC and industry were actively working to address the hazards posed to children by the ingestion of magnets, Battat failed to notify the CPSC or inform consumers of the Subject Products' defect and resulting potential hazard.

13. Staff contacted Battat on July 9, 2007, to request a full report pursuant to CPSA section 15(b) (''Section 15 Report''). With this request, Staff enclosed two in-depth investigation reports of consumer reports describing magnets liberating from the Subject Products.

14. Battat did not immediately provide the requested Section 15 Report on the Subject Products. As a result, Staff reiterated its request at least two more times from July 2007 to October 2007. Battat did not file the requested Section 15 Report on the Subject Products until October 12, 2007, after at least three requests from Staff.

15. Battat failed to inform the Commission of the defect and resulting potential hazard present in the Subject Products bearing model numbers

BB1431H and BB1502H until October 12, 2007. Subject Products bearing those model numbers were recalled on January 23, 2008.

16. The January 23, 2008, recall did not encompass all Subject Products posing the magnet liberation hazard in U.S. commerce. Battat failed to inform the Commission of the defect and resulting potential hazard in two additional models of the Subject Products, those bearing model numbers BB1439H and BAT–34, until it filed an additional Section 15 Report on February 11, 2008.

17. Although Battat had obtained sufficient information to reasonably support the conclusion that the Subject Products contained a defect that could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Battat failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to inform the Commission immediately of the defect or advising that the defect involved the Subject Products, Battat knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

18. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Battat is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Battat

19. Battat denies Staff's allegations that Battat knowingly or otherwise violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b). Battat further disputes the staff position that Battat obtained information that reasonably supported the conclusion that the subject products contain a defect that could create a substantial product hazard or create an unreasonable risk of serious injury or death.

20. The Magnabild toys were manufactured in 2004 and 2005 and tested to all existing CPSC safety standards, including the use and abuse testing requirements used by CPSC and the toy industry to determine whether toys would break during reasonably foreseeable use and abuse. Furthermore, the Magnabild toys were labeled ''Warning: Choking Hazard; Toy Contains Small Parts & Small Balls; Not For Children Under 3 years.''

21. When Battat learned about the Magnetix recall, it examined its product to determine whether its product presented the same risks as the Magnetix toys and concluded that it did not because most of the Magnabild products did not contain the small magnets that were present in the Magnetix products and Battat believed its magnets were better retained in its toys and much less likely to come out even under foreseeable misuse and abuse. Unlike the Magnetix product that used only tiny magnets, Battat's predominant magnetic component was a one inch magnet molded into a full-length plastic sheath.

22. Battat had received very few complaints of magnets coming out of its Magnabild toys and no reports of injury, unlike other manufacturers whose products—according to CPSC press releases and legal documents—had released well over a thousand magnets and allegedly caused a death and more than two dozen serious intestinal injuries.

23. At some point before being contacted by CPSC in July 2007, Battat became aware that CPSC was working prospectively on a labeling rule for magnet toys with ASTM that allowed the sale of loose magnets, as long as a warning label was present telling consumers about the risk of infection and death from magnets sticking together across intestines. Battat did not use loose magnets in its toy and had received very few complaints of magnet release. Battat believed that its existing warning label about a choking hazard was likely to be no less effective at advising parents to keep the product away from small children.

24. Battat did not receive any complaints about magnets coming out of its toys for a period of approximately 14 months before it was contacted by the CPSC in July 2007 and had not received any reports about magnet ingestion or injury. This increased the firm's confidence that it did not have a significant problem with magnets coming out of its Magnabild toys.

25. From the time it was first contacted by the CPSC compliance staff, Battat believed that the CPSC staff was adequately informed of the alleged defect or risk in its product. Battat knew that CPSC had samples of the Magnabild product and had investigated incidents where magnets allegedly came out. Further, the staff contended the product presented a substantial product hazard and sought a recall. Battat made its ''full report'' in October 2007 to provide details of its recall proposal. Although Battat did not agree with the CPSC staff view of the alleged hazard, Battat agreed to recall 125,000 Magnabild toy sets, 84,430 of which had only the one inch rod magnets Battat believed would not come out of their sheathes.

26. In February 2008, Battat learned that another 7,000 Magnabild products in models BB1439H and BAT 34, had been shipped to the United States by the Chinese manufacturer several years before. Although both of these models only contained the fully sheathed one inch magnets Battat believed would not come out, Battat reported its discovery to CPSC and offered to recall these products as well. In total, only 31% of the 132,000 total units Battat ultimately recalled had any small magnets and Battat believed they were well retained in the Battat design.

27. Battat believes its judgment that the Magnabild product did not contain reportable defects or unreasonable risks was reasonable. That judgment was supported by technical and design differences from products that experienced large numbers of failures and caused injuries. Battat's judgment has been further borne out by the lack of any injuries associated with magnets coming out of Magnabild toys and by a lack of reports of magnet release for several years since its recall. Battat settles this matter not because it has violated the reporting obligation in section 15(b) of the CPSA, or because it believes the settlement amount is reasonably related to the statutory criteria for penalties set forth in the CPSA, but to avoid the negative publicity associated with CPSC pursuit of a penalty through litigation and the costs and interference with its business activities that would likely result from such litigation even if pursued to a successful conclusion.

Agreement of the Parties

28. The CPSC has jurisdiction over this matter under the CPSA and for the purposes of this settlement agreement only, over Battat.

29. In settlement of Staff's allegations, and while specifically and strenuously denying those allegations, Battat consents to the entry of the attached Order (''Order'') as set forth below and will pay a civil penalty in the amount of four hundred thousand dollars ($400,000.00) over a period of 12 months of the date this Order becomes final. The payment shall be made to the CPSC via *www.pay.gov* with equal installments of $100,000.00 paid quarterly starting within 20 days of service upon Battat of the final Order in this matter.

30. The parties further agree that if Battat fails to make timely payments as agreed to in paragraph 29, such conduct will be considered a violation of this Agreement and Order.

31. The parties enter into this Agreement for settlement purposes only.

The Agreement does not constitute an admission by Battat or a determination by the Commission that Battat violated the CPSA's reporting requirements. This agreement completely and finally resolves the staff allegations set forth in paragraphs 2–18 with respect to Battat Incorporated, and its officers, directors, and related companies.

32. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

33. Upon the Commission's final acceptance of the Agreement and issuance of the Order, Battat knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) An administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Battat failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

34. The Commission may publicize the terms of the Agreement and the final Order.

35. The Agreement and the final Order shall apply to, and be binding upon, Battat, and each of its successors and/or assigns, until the obligations described in paragraph 29 has been fulfilled to the satisfaction of the Commission.

36. The Commission issues the final Order under the provisions of the CPSA, and a violation of the final Order may subject Battat, and each of its successors and/or assigns, to appropriate legal action.

37. The Agreement may be used in interpreting the final Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms or the Agreement and the final Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

38. If any provision of the Agreement or the final Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the final Order, such provision shall be fully severable. The balance of the Agreement and the final Order shall remain in full force and effect, unless the Commission and Battat agree that severing the provision materially affects the purpose of the Agreement and final Order.

39. This Agreement may be executed in counterparts.

Battat Incorporated

Dated: *June 27, 2012.*

By:

Joseph Battat.

Dated *June 27, 2012*

By:

Anthony T. Pavel, Jr.,
Counsel to Battat Incorporated, K&L Gates LLP, 1601 K Street NW., Washington, DC 20006–1600.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Mary B. Murphy,
Assistant General Counsel

Dated: *July 12, 2012.*

By:

Sarah C. Wang,
Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Battat, Incorporated (''Battat''), and U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Battat, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered* that the Settlement Agreement be, and is, hereby, accepted; and it is *further ordered,* that Battat shall pay a civil penalty in the amount of four hundred thousand dollars ($400,000.00) within 12 months of service of the Commission's Order upon counsel for Battat, identified in the Settlement Agreement. The payments shall be made electronically to the CPSC via *www.pay.gov* in equal quarterly installments of $100,000.00 commencing within 20 days of service upon Battat of this final order. Upon the failure of Battat to make the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Battat at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Battat fails to make such payments, as set forth in the Settlement Agreement, such conduct will be considered a violation of this Agreement and Order.

Provisionally accepted and provisional Order issued on the *13th* day of *July,* 2012.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–17704 Filed 7–19–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–10]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–10 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 10 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $3.00 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar
(ii) *Total Estimated Value:*

Major Defense Equipment*	$1.70 billion
Other	$1.30 billion
TOTAL	$3.00 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 24 AH–64D APACHE Block III LONGBOW Attack Helicopters, 56 T700–GE–701D Engines, 27 AN/ASQ–170 Modernized Target Acquisition and Designation Sight, 27 AN/AAR–11 Modernized Pilot Night Vision Sensors, 12 AN/APG–78 Fire Control Radars (FCR) with Radar Electronics Unit (LONGBOW component), 12 AN/APR–48A Radar Frequency Interferometers, 28 AN/AAR–57(V)7 Common Missile Warning Systems, 30 AN/AVR–2B Laser Detecting Sets, 28 AN/APR–39A(V)4 Radar Signal Detecting Sets, 28 AN/ALQ–136(V)5 Radar Jammers or Equivalent, 160 Integrated Helmet and Display Sight Systems-21, 58 Embedded Global Positioning Systems with Inertial Navigation, 30 30mm Automatic Chain Guns, 8 Aircraft Ground Power Units, 52 AN/AVS–6 Night Vision Goggles, 60 M299A1 HELLFIRE Missile Launchers, 576 AGM–114R HELLFIRE II Missiles, 295 FIM–92H STINGER Reprogrammable Micro Processor (RMP) Block I Missiles, 50 STINGER Air-to-Air Launchers, 4092 2.75 in Hydra Rockets, and 90 APACHE Aviator Integrated Helmets. Also included are M206 infrared countermeasure flares, M211

and M212 Advanced Infrared Countermeasure Munitions (AIRCM) flares, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (WYX)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached

(viii) *Date Report Delivered to Congress:* July 10, 2012

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Qatar—AH–64D APACHE Block III LONGBOW Attack Helicopters

The Government of Qatar has requested a possible sale of 24 AH–64D APACHE Block III LONGBOW Attack Helicopters, 56 T700–GE–701D Engines, 27 AN/ASQ–170 Modernized Target Acquisition and Designation Sight, 27 AN/AAR–11 Modernized Pilot Night Vision Sensors, 12 AN/APG–78 Fire Control Radars (FCR) with Radar Electronics Unit (LONGBOW component), 12 AN/APR–48A Radar Frequency Interferometers, 28 AN/AAR–57(V)7 Common Missile Warning Systems, 30 AN/AVR–2B Laser Detecting Sets, 28 AN/APR–39A(V)4 Radar Signal Detecting Sets, 28 AN/ALQ–136(V)5 Radar Jammers or Equivalent, 160 Integrated Helmet and Display Sight Systems-21, 58 Embedded Global Positioning Systems with Inertial Navigation, 30 30mm Automatic Chain Guns, 8 Aircraft Ground Power Units, 52 AN/AVS–6 Night Vision Goggles, 60 M299A1 HELLFIRE Missile Launchers, 576 AGM–114R HELLFIRE II Missiles, 295 FIM–92H STINGER Reprogrammable Micro Processor (RMP) Block I Missiles, 50 STINGER Air-to-Air Launchers, 4092 2.75 in Hydra Rockets, and 90 APACHE Aviator Integrated Helmets. Also included are M206 infrared countermeasure flares, M211 and M212 Advanced Infrared Countermeasure Munitions (AIRCM) flares, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $3.00 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political and economic progress in the Middle East. Qatar is host to the U.S. Central Command forces and serves as a critical forward-deployed location in the region. The acquisition of these helicopters will allow for integration with U.S. forces for training exercises, which contributes to regional security and interoperability.

The proposed sale of the AH–64D APACHE helicopters will allow the Qatari Armed Forces (QAF) to replace its aging airframes with multi-mission attack helicopters, capable of meeting its requirements for close air support, armed reconnaissance and anti-tank warfare missions. The helicopters will provide a long-term defensive and offensive capability to the Qatari peninsula as well as enhance the protection of key oil and gas infrastructure and platforms which are vital to U.S. and western economic interests. Qatar will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Company in Mesa, Arizona, Lockheed Martin Corporation in Orlando, Florida, General Electric in Cincinnati, Ohio, Lockheed Martin Mission Systems and Sensors in Owego, New York, Longbow Limited Liability Corporation in Orlando, Florida, and Raytheon Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of three U.S. Government and five contractor representatives to Qatar to support delivery of the APACHE helicopters and provide support and equipment familiarization. In addition, Qatar has expressed an interest in a Technical Assistance Fielding Team for in-country pilot and maintenance training. To support the requirement a team of 12 personnel (one military team leader and 11 contractors) would be deployed to Qatar for approximately three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AH–64D APACHE Attack Helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the sale:

a. The AN/APG–78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive AN/APR–48A Radar Frequency Interferometer (RFI) mounted on top of the helicopter mast. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters and helicopters, and fixed wing aircraft in normal flight. The RFI detects threat radar emissions and determines the type of radar and mode of operation. The FCR data and RFI data are fused for maximum synergism. If desired, the radar data can be used to refer targets to the regular electro-optical Modernized Target Acquisition and Designation Sight (MTADS), permitting additional visual/infrared imagery and control of weapons, including the semi active laser version of the HELLFIRE II missile. Critical system information is stored in the FCR in the form of mission executable code, target detection, classification algorithms and coded threat parametrics. This information is provided in a form that cannot be extracted by the foreign user via anti-tamper provisions built into the system. The content of these items is classified Secret. The RFI is a passive radar detection and direction finding system, which utilizes a detachable User Data Module (UDM) on the RFI processor, which contains the Radio Frequency threat library. The UDM, which is a hardware assemblage, is classified Secret when programmed with threat parameters, threat priorities and/or techniques derived from U.S. intelligence information.

b. The AN/ASQ–170 Modernized Target Acquisition and Designation

Sight/AN/AAQ–11 Modernized Pilot Night Vision Sensor (MTADS/MPNVS) provides day, night, limited adverse weather target information, as well as night navigation capabilities. The MPNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while MTADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

c. The AAR–57(V)7 Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

d. The AN/APR–39A(V)4 Radar Signal Detecting Set is a system, that provides warning of a radar directed air defense threat and allow appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

e. The AN/AVR–2B Laser Detecting Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

f. The AN/ALQ–136(V)5 Radar Jammer, or equivalent, is an automatic radar jammer that analyzes various incoming radar signals. When threat signals are identified and verified, jamming automatically begins and continues until the threat radar breaks lock. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret; releasable technical data (technical performance) is classified Secret.

g. The Integrated Helmet Display Sight System (IHDSS–21) is an enhanced version of its predecessor. It will provide improved operational performance primarily in resolution allowing greater utilization of the MTADS/MPNVS performance enhancements. The hardware is Unclassified.

h. The highest level for release of the AGM–114R HELLFIRE II missile is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential.

i. The FIM–92H STINGER Block 1 Reprogrammable Micro Processor (RMP) (less module) missile is an advanced, ''fire and forget,'' short-range, air defense weapon system. It provides low-altitude defense for ground forces against attack or aerial observation by low-flying Unmanned Aerial System, Cruise Missile, Rotary Wing, and Fixed-Wing threats. The STINGER employs an infrared heat seeking/ultraviolet seeker to guide to the target. The STINGER Block I missile has an extensive infrared counter-countermeasure capability and can engage targets from any aspect to include head-on. The missile utilizes a high-explosive, hit-to-kill warhead. The FIM–92 STINGER RMP Block I missile can be fired from a variety of platforms to include vehicles and helicopters. The hardware is classified Confidential. The highest classification of data and information is Secret; and the Captive Flight Trainer has a classification of Confidential.

j. The M211-flare is a countermeasure decoy in a 1″x1″x8″ form factor in an aluminum case cartridge. It consists of case, piston, special material payload foils, and end cap. The special material is a pyrophoric metal (iron) foil that reacts with oxygen to generate infrared energy. The M211 decoys are dispersed from an aircraft to be used as a decoy in combination with the currently fielded M206 and M212 countermeasure flares to protect against advanced air-to-air and surface-to-air missile threats. The hardware is Unclassified and releasable technical manuals for operation and maintenance are classified Secret.

k. The M212 flare is a multi-spectral countermeasure flare in a 1″x1″x8″ form factor in an aluminum case cartridge. It consists of a case, impulse cartridge, Safe and Ignition (S&I), a propellant grain and a forward brass closure which acts as a weight to improve aerodynamics of the decoy. The M212 flares are dispersed from an aircraft and used in combination with the currently fielded M206 and M211 countermeasure flares and decoys to protect against advanced air-to-air and surface-to-air missile threats. The hardware is Unclassified and releasable technical manuals for operation and maintenance are classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–17719 Filed 7–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–35]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–35 with attached transmittal and policy justification.

Dated: July 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 11 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-35, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Poland for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 12–35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Poland

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0 million
Other	$200 million
TOTAL	$200 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 9 Ground Controlled Approach Systems, International Civil Aviation Organization (ICAO) Category II, with Primary Surveillance Radars (PSR), Precision Approach Radars (PAR), Secondary Surveillance Radars (SSR), Very High Frequency/Ultra High Frequency radio equipment, site surveys, systems installation and testing, spare and repair parts, tools and test equipment, personnel training and training equipment, technical data and publications, warranties, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (DAY)

(v) *Prior Related Cases, if any:* FMS case QAJ–$5M–19Mar10

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* July 11, 2012

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—Ground Controller Approach Radar Systems

The Government of Poland has requested a possible sale of 9 Ground Controlled Approach Systems, ICAO Category II, with PSR, PAR, SSR, Very High Frequency/Ultra High Frequency radio equipment, site surveys, systems installation and testing, spare and repair parts, tools and test equipment, personnel training and training equipment, technical data and publications, warranties, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $200 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security and capability of a staunch NATO ally. Poland continues to be an important force for political stability and economic progress in Central Europe.

The proposed sale will further standardize the air navigation and approach radar capabilities of Poland, increasing aviation safety across the country and region. This is a continuation of a modernization program started several years ago. Delivery of this system will support Poland's F–16 and C–130 programs and the USAF Aviation Detachment.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be ITT Exelis Inc. in Van Nuys, California. There are no known offset agreements proposed in connection with this potential sale at this time.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–17720 Filed 7–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–24 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 10 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-24, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $137 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$106 million
Other	$31 million
TOTAL	$137 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 700 AGM–114K3A or AGM–114R3 HELLFIRE tactical missiles, 25 training missiles, containers, spare and repair parts, support and test equipment, publications and technical data, personnel and training equipment, U.S. Government and contractor logistics, engineering and technical support, and other related elements of program support.

(iv) *Military Department:* Navy (AAA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* July 10, 2012

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Qatar—AGM–114K3A or AGM–114R3 HELLFIRE Missiles

The Government of Qatar has requested a possible sale of 700 AGM–114K3A or AGM–114R3 HELLFIRE tactical missiles, 25 training missiles, containers, spare and repair parts, support and test equipment, publications and technical data, personnel and training equipment, U.S. Government and contractor logistics, engineering and technical support, and other related elements of program support. The estimated cost is $137 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be an important force for political stability and economic progress in the Middle East.

Qatar intends to use these missiles to counter current and future threats. This proposed sale will contribute to Qatar's military goal of updating its Anti-Surface Warfare capability while further enhancing its interoperability with the U.S. and other allies. This capability will serve to deter potential attacks against strategic targets across Qatar, to include infrastructure and resources vital to the security of the U.S.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The prime contractor is Lockheed Martin Corporation in Orlando, Florida and Troy, Alabama. There are no known offset agreements proposed in connection with this sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Qatar.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM–114K3A or AGM–114R3 HELLFIRE II is a precision guided, subsonic missile with a maximum range of up to 8,000 meters. The missile does not contain sensitive technology and is Unclassified. However, it does contain hazardous material which requires hazardous material packaging, handling, and shipping. Releasable technical manuals are Unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–17721 Filed 7–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–20]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittals 12–20 with attached transmittal and policy justification.

Dated: July 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUL 10 2012

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-20, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 12–20

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Kuwait.

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ 0 million
Other	$200 million
Total	$200 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* continuing logistics support, training, depot-level repair services, and technical services in support of AH–64D APACHE helicopters, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support.

(iv) *Military Department:* Army (ULJ, Amd #3).

(v) *Prior Related Cases, if any:* FMS case ULJ–$46M–15Jan10.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* July 10, 2012.

Policy Justification

Kuwait—Follow-On Logistics and Technical Support

The Government of Kuwait has requested a possible sale for continuing logistics support, training, depot-level repair services, and technical services in support of AH–64D APACHE helicopters, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services and other related elements of program and logistics support. The estimated cost is $200 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of logistics and technical support will enable the Kuwaiti Air Force to ensure the reliability and performance of its APACHE helicopters. The follow-on support will allow Kuwait to maintain aircraft availability/operational rates, and enhance interoperability with the U.S. and other nations.

The proposed sale of this support will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in Mesa, Arizona; Lockheed Martin Corporation in Orlando, Florida; Longbow Limited Liability Corporation in Orlando, Florida; and Lockheed Martin Mission Sensors and Systems in Owego, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale may require an extension to the assignment of additional U.S. Government or contractor representatives to Kuwait. There will be U.S. Government and contractor representatives for one-week intervals once annually to participate in working level meetings. Approximately 44 contractor representatives will serve as technical representatives for approximately three (3) years following the end of the current contract base year. Additionally, up to three (3) U.S. Government personnel and one (1) contractor representative, with various technical skills and disciplines, will be required to provide in-country support for an extended period of time.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–17722 Filed 7–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent to Grant an Exclusive License; PadJack, Inc.

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant PadJack, Inc. a revocable exclusive license to practice the following Government-Owned invention as described in the following: Patent Application Serial No. 12/803,042 entitled ''Locking Seal For Data Ports.''

The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice publication to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: July 17, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–17737 Filed 7–19–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection RequestsNPEFS 2011–2014: Common Core of Data (CCD) National Public Education Financial Survey

AGENCY: Institute of Education Sciences, Department of Education.

SUMMARY: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data which provides function expenditures by salaries, benefits, purchased services, and supplies, and includes Federal, State, and local revenues by source.

DATES: Interested persons are invited to submit comments on or before September 18, 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 04890. 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 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: NPEFS 2011–2014: Common Core of Data (CCD) National Public Education Financial Survey.

OMB Control Number: 1850–0067.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 5,264.

Abstract: The NPEFS has been included in the National Center for Education Statistics' Common Core of Data since FY 1982 (school year 1981–82). The NPEFS collection includes data on all state-run schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, certain formula grant programs (e.g. Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, other federal programs, such as the Educational Technology State Grants program (Title II Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (Title II Part A of the ESEA) make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I Part A allocations. No changes have been made to the NPEFS since its last OMB approval in January 2012. This submission is to conduct the annual collection of state-level finance data for FY 2012–2014.

Dated: July 17, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–17743 Filed 7–19–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9690–109]

Eagle Creek Hydropower, LLC, Eagle Creek Land Resources, LLC, Eagle Creek Water Resources, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No.:* 9690–109.

c. *Date Filed:* June 19, 2012.

d. *Applicants:* Eagle Creek Hydropower, LLC; Eagle Creek Land Resources, LLC; and Eagle Creek Water Resources, LLC.

e. *Name of Project:* Rio Hydroelectric Project.

f. *Location:* The project is located on the Mongaup River in Orange County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Gates, Senior Vice President—Operations, Eagle Creek Hydropower, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC, 65 Madison Avenue, Suite 500, Morristown, NJ 07960, (973) 998–8403.

i. *FERC Contact:* Steven Sachs at (202) 502–8666 or *Steven.Sachs@ferc.gov.*

j. Deadline for filing motions to intervene, protests, and comments is 30 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–9690–109) on any motions, protests, or comments filed.

k. *Description of Application:* The licensee proposes to install a second powerhouse containing a single 800 kilowatt turbine/generator unit designed to release the required 100 cubic foot per second minimum flow. The new powerhouse would be located about 300 feet downstream of the project's dam and draw water through a new 48-inch-diameter underground penstock which would tap into the project's existing pipeline. The licensee also proposes to construct a new access road, transmission line, and parking area associated with the new powerhouse.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Motions to Intervene, Protests, and Comments:* Anyone may submit a motion to intervene, protest, or comments in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene, protests, or comments must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must: (1) Bear in all capital letters the title ''MOTION TO INTERVENE,'' ''PROTEST,'' or ''COMMENTS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening, protesting, or commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene, protests, or comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17657 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9784–002]

North American Hydro Holdings, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to Exemption.

b. *Project No:* 9784–002.

c. *Date Filed:* June 16, 2012; supplemented June 29, 2012.

d. *Applicant:* North American Hydro Holdings, LLC.

e. *Name of Project:* Manawa Dam Project.

f. *Location:* The project is located on the North Branch of the Little Wolf River in Waupaca County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Klabunde, Vice President, Operations, North American Hydro Holdings, LLC, 116 State Street, P.O. Box 167, Neshkoro, WI 54960, (920) 293–8087.

i. *FERC Contact:* John K. Novak at (202) 502–6076 or *john.novak@ferc.gov.*

j. Deadline for filing motions to intervene, protests, and comments is 15 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–9784–002) on any motions, protests, or comments filed.

k. *Description of Application:* North American Hydro Holdings, LLC is requesting a temporary variance in the operating range of 99.4 feet to 99.9 feet (Wisconsin DNR datum) for the purpose of drawing down the Manawa project reservoir to conduct needed dam safety repair work. A drawdown of eight feet is proposed and would commence on August 1, 2012. Refill of the reservoir is expected to start by November 15, 2012. Measures will be in place to protect environmental resources in the project impoundment and listed mussel species downstream of the dam during the drawdown period.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Motions to Intervene, Protests, and Comments:* Anyone may submit a motion to intervene, protest, or comments in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene, protests, or comments must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must: (1) Bear in all capital letters the title ''MOTION TO INTERVENE,'' ''PROTEST,'' or ''COMMENTS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening, protesting, or commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene, protests, or comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17654 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13590–001]

Lockhart Power Company, Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 13590–001.

c. *Date filed:* August 31, 2010.

d. *Applicant:* Lockhart Power Company, Inc.

e. *Name of Project:* Riverdale Hydroelectric Project.

f. *Location:* On the Enoree River, near Enoree, in Spartanburg and Laurens counties, South Carolina. The proposed project would not affect any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bryan D. Stone, Chief Operating Officer, Lockhart Power Company, Inc., 420 River Street, P.O. Box 10, Lockhart, SC 29364; (864) 545–2211.

i. *FERC Contact:* Sarah Florentino at (202) 502–6863, or via email at *Sarah.Florentino@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *The existing, currently non-operational, Riverdale Project consists of:* (1) A 12-foot high, 425-foot-long concrete gravity dam with 2-foot flashboards; (2) a 6.6-acre impoundment; (3) a headrace leading to a 110-foot-long steel penstock; (4) a powerhouse containing a single 1.24-megawatt turbine-generator unit; (5) a 510-foot-long tailrace channel; and (6) appurtenant facilities. The proposed project would generate about 5,318 megawatt-hours annually. Lockhart Power Company, Inc. proposes to repair or upgrade the turbine unit and return the project operation.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: July 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17651 Filed 7–19–12; 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 electric rate filings:

Docket Numbers: ER11–4081–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 07–11–12 RAR Compliance Filing to be effective 10/1/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5151.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1338–002.

Applicants: Duke Energy Carolinas, LLC, Carolina Power & Light Company.

Description: JDA Compliance Filing to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5024.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1343–002.

Applicants: Duke Energy Carolinas, LLC, Florida Power Corporation, Carolina Power & Light Company.

Description: First Joint OATT Compliance Filing to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5023.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1343–003.

Applicants: Duke Energy Carolinas, LLC, Florida Power Corporation, Carolina Power & Light Company.

Description: Second Joint OATT Compliance Filing (Accepted Changes) to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5028.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1345–002.

Applicants: Florida Power Corporation.

Description: Revised Certificate of Concurrence with Joint OATT by Florida Power Corporation to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5031.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1346–002.

Applicants: Carolina Power & Light Company.

Description: Revised Certificate of Concurrence with Joint OATT by

Carolina Power and Light to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5032.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–1347–003.

Applicants: Carolina Power & Light Company.

Description: Rate Schedule No. 190 Compliance filing of Carolina Power and Light Company to be effective 7/2/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5037.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2225–000.

Applicants: Limon Wind II, LLC.

Description: Limon Wind II, LLC Market-Based Rate Tariff to be effective 9/1/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5002.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2226–000.

Applicants: Limon Wind, LLC.

Description: Limon Wind, LLC Market-Based Rate Tariff to be effective 9/1/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5003.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2227–000.

Applicants: Ensign Wind, LLC.

Description: Ensign Wind, LLC Market-Based Rate Tariff to be effective 9/8/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5004.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2228–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Enh. of Elec. Mkt. Surv. Through Ongoing Elect. Del. of Mkt. Data to be effective 7/6/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5019.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2229–000.

Applicants: Southern California Edison Company.

Description: SGIA and Service Agreement SCE—Samsung C&T America, Inc. to be effective 9/10/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5030.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2230–000.

Applicants: PJM Interconnection, LLC.

Description: Original Service Agreement No. 3336; Queue No. X2–059 to be effective 6/12/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5038.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2231–000.

Applicants: Shiloh IV Wind Project, LLC.

Description: Shiloh IV Wind Project Baseline MBR Application Filing to be effective 9/10/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5045.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2232–000.

Applicants: Southern California Edison Company.

Description: GIA and Distrib Serv Agmt CA State University at San Bernardino Fuel Cell Proj to be effective 7/12/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5050.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2233–000.

Applicants: Berry Petroleum Company.

Description: Application for Market Based Rate Authority to be effective 7/11/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5081.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2234–000.

Applicants: NV Energy, Inc.

Description: Service Agreement No. 10–01250 Amended and Restated Tonopah Solar Energy LGIA to be effective 6/12/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5108.

Comments Due: 5 p.m. ET 8/1/12.

Docket Numbers: ER12–2235–000.

Applicants: PJM Interconnection, LLC.

Description: Notice of Cancellation of Service Agreement 3314 in Docket No. ER12–1790–000 to be effective 6/15/2012.

Filed Date: 7/11/12.

Accession Number: 20120711–5124.

Comments Due: 5 p.m. ET 8/1/12.

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 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17672 Filed 7–19–12; 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 (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

Transmission Owner Cost Allocation Proposal Meeting

July 18, 2012, 10:00 a.m.–3:00 p.m., Local Time

The above-referenced meeting will be held at: The Washington Marriott at Metro Center, Washington, DC.

The above-referenced meeting is open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection,* L.L.C.

Docket Nos. ER06–456, ER06–954, ER06–1271, ER07–424, ER06–880, EL07–57, ER07–1186, ER08–229, ER08–1065, ER09–497, and ER10–268, *PJM Interconnection,* L.L.C.

Docket No. ER10–253 and EL10–14, *Primary Power,* L.L.C.

Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. ER11–4070, *RITELine Indiana et. al.*

Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER09–1589, *FirstEnergy Service Company*

Docket No. ER10–549, *PJM Interconnection, L.L.C.*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. EL12–38, *New York Independent System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–2140, *PJM Interconnection, L.L.C.*

Docket No. ER11–2622, *PJM Interconnection, L.L.C.*
Docket No. ER11–3106, *PJM Interconnection, L.L.C.*
Docket No. ER11–4379, *PJM Interconnection, L.L.C.*
Docket No. ER12–445, *PJM Interconnection, L.L.C.*
Docket No. ER12–773, *PJM Interconnection, L.L.C.*
Docket No. ER12–718, *New York Independent System Operator, Inc.*
Docket No. ER12–1177, *PJM Interconnection, L.L.C.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER12–1693, *PJM Interconnection, L.L.C.*
Docket No. EL12–69, *Primary Power LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER12–1700, *PJM Interconnection, L.L.C.*
Docket No. ER12–1810, *PJM Interconnection, L.L.C.*
Docket No. ER12–1901, *GenOn Power Midwest, LP*
Docket No. ER12–2080, *GenOn Power Midwest, LP*
Docket No. ER12–2085, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17650 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Marriott Country Club Plaza, 4445 Main Street, Kansas City, MO 64111. The hotel phone number is (800) 810–3708.

SPP RE

July, 30, 2012 (8:00 a.m.–12:00 p.m.)

SPP RSC

July 30, 2012 (1:00 p.m.–5:00 p.m.)

SPP Board of Directors

July 31, 2012 (8:00 a.m.–3:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–748, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER09–1192, *Southwest Power Pool, Inc.*
Docket No. ER11–4105, *Southwest Power Pool, Inc.*
Docket No. ER12–140, *Southwest Power Pool, Inc.*
Docket No. ER12–430, *Southwest Power Pool, Inc.*
Docket No. ER12–550, *Southwest Power Pool, Inc.*
Docket No. ER12–891, *Southwest Power Pool, Inc.*
Docket No. ER12–909, *Southwest Power Pool, Inc.*
Docket No. ER12–959, *Southwester Power Pool, Inc.*
Docket No. ER12–1017, *Southwest Power Pool, Inc.*
Docket No. ER12–1018, *Southwest Power Pool, Inc.*
Docket No. ER12–1179, *Southwest Power Pool, Inc.*
Docket No. ER12–1401, *Southwest Power Pool, Inc.*
Docket No. ER12–1402, *Southwest Power Pool, Inc.*
Docket No. ER12–1586, *Southwest Power Pool, Inc.*
Docket No. ER12–1772, *Southwest Power Pool, Inc.*
Docket No. ER12–1779, *Southwest Power Pool, Inc.*
Docket No. ER12–1849, *Southwest Power Pool, Inc.*
Docket No. ER12–1854, *Southwest Power Pool, Inc.*
Docket No. ER12–1974, *Southwest Power Pool, Inc.*
Docket No. ER12–2054, *Southwest Power Pool, Inc.*
Docket No. ER12–2064, *Southwest Power Pool, Inc.*
Docket No. ER12–2090, *Southwest Power Pool, Inc.*
Docket No. ER12–2091, *Southwest Power Pool, Inc.*
Docket No. EL12–2, *Southwest Power Pool, Inc.*
Docket No. EL12–47, *Southwest Power Pool, Inc.*
Docket No. EL12–51, *Southwest Power Pool, Inc.*
Docket No. EL12–60, *Southwest Power Pool, Inc., et al.*
Docket No. ER12–1813, *The Empire District Electric Co.*
Docket No. ER12–1071, *Entergy Arkansas, Inc.*
Docket No. EL12–59, *Golden Spread Electric Cooperative, Inc.*
Docket No. ER09–548, *ITC Great Plains, LLC*
Docket No. ER12–1826, *Kansas City Power & Light Co.*
Docket No. ER12–1828, *KCP&L Greater Missouri Operations Co.*
Docket No. ER11–3728, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1577, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–36, *Prairie Wind Transmission, LLC*
Docket No. ER12–1537, *Public Service Co. of Oklahoma*
Docket No. ER12–1538, *Southwestern Electric Power Co.*
Docket No. ER12–1970, *Southwestern Electric Power Co.*
Docket No. ER09–35, *Tallgrass Transmission, LLC*
Docket No. EL12–28, *Xcel Energy Services Inc., et al.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17656 Filed 7–19–12; 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 meetings related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Order 1000 Tariff Draft Task Force

July 24, 2012
2:00 p.m.–6:00 p.m. CDT
July 25, 2012
9:30 a.m.–1 p.m. CDT

The above-referenced meetings will be held at:

AEP Offices, 1201 Elm Street, 8th Floor, Dallas, TX 75270.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.spp.org.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC*
Docket No. ER09–36–001, *Prairie Wind Transmission, LLC*
Docket No. ER09–548–001, *ITC Great Plains, LLC*
Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*
Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*
Docket No. ER12–1772–000, *Southwest Power Pool, Inc.*
Docket No. ER12–2176–000, *Southwest Power Pool, Inc.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov.*

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17655 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG12–43–000, EG12–53–000, EG12–54–000, *et al.*]

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

	Docket Nos.
Sherbino I Wind Farm LLC	EG12–43–000
Eagle Point Power Generation LLC	EG12–53–000
Cimarron Windpower II, LLC	EG12–54–000
Ironwood Windpower, LLC	EG12–55–000
NRG Solar Alpine LLC	EG12–56–000
Cayuga Operating Company, LLC	EG12–57–000
Somerset Operating Company, LLC	EG12–58–000
Copper Mountain Solar 2, LLC	EG12–59–000
Minok Wind, LLC	EG12–60–000
Senate Wind, LLC	EG12–61–000
Canadian Hills Wind, LLC	EG12–62–000
Moore Solar, Inc.	FC12–6–000
Sombra Solar, Inc.	FC12–7–000

Take notice that during the month of June 2012, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: July 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17658 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–50–000]

Alliance Pipeline, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Tioga Lateral Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Tioga Lateral Project, proposed by Alliance Pipeline L.P. (Alliance) in the above-referenced docket. Alliance requests authorization to construct and operate approximately 79.3 miles of new 12-inch-diameter natural gas pipeline lateral and appurtenant facilities in Williams, Mountrail, Burke, and Renville Counties, North Dakota. The Tioga Lateral Project would be designed and constructed to provide about 106.5 million cubic feet per day of new transportation capacity to the Chicago market area.

The EA assesses the potential environmental effects of the construction and operation of the Tioga Lateral Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Fish and Wildlife Service (FWS) and the U.S. Army Corps of Engineers (COE) participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Tioga Lateral Project includes the following facilities:

- Approximately 79.3 miles of 12-inch-diameter natural gas pipeline crossing portions of Williams, Mountrail, Burke, Ward, and Renville Counties, North Dakota;
- A 6,000 horsepower compressor station (Tioga Compressor Station) containing three natural gas-driven engines/compressors in Williams County;
- One meter station within the proposed compressor station site in Williams County;
- One pressure regulating station adjacent to the existing Alliance mainline in Renville County;
- One pig [1] launcher at the proposed compressor station site and one pig receiver at the pressure regulating station site; and
- Five mainline block valves.

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

The FERC staff mailed copies of the EA to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. 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 the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before August 13, 2012.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–50–000) 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 submitting brief, text-only comments on a project;

(2) You can also 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.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

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 (*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., CP12–50). 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 offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: July 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17653 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

[2] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2231–000]

Shiloh IV Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Shiloh IV Wind Project, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17676 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2227–000]

Ensign Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Ensign Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17675 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2226–000]

Limon Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Limon Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17674 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2225–000]

Limon Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Limon Wind II, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17673 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2233–000]

Berry Petroleum Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Berry Petroleum Company's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–17671 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–002]

Copper Valley Electric Association; Notice of Updated Environmental Analysis Preparation Schedule

a. *Type of Application:* Original License Application.

b. *Project No.:* 13124–002.

c. *Applicant:* Copper Valley Electric Association (Copper Valley).

d. *Name of Project:* Allison Creek Project.

e. *Location:* On the south side of Port Valdez, on the shore opposite from the community of Valdez, Alaska, near the Alyeska Marine Terminal and the terminus of the Trans Alaska Pipeline System in Township 9 South, Range 6 West, Seward Meridian, Alaska.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Robert A. Wilkinson, CEO, Copper Valley Electric Association, P.O. Box 45, Mile 187 Glenn Highway, Glennallen, Alaska 99588, 907–822–3211, *allisonlake@cvea.org.*

h. *FERC Contact:* Kim A. Nguyen, phone (202) 502–6105; email at *kim.nguyen@ferc.gov.*

i. *The proposed project would consist of:* (1) A 100-foot by 10-foot diversion structure on Allison Creek; (2) a 7,600-foot-long, 42-inch-diameter buried/above-ground steel pipeline; (3) a 40-foot by 40-foot powerhouse; (4) two 6,500 kilowatt Pelton turbines; (5) a 150-foot-long tailrace; (6) a switchyard; (7) 3.8-mile-long, 34.5 kilovolt transmission line; and (8) appurtenant facilities.

j. On April 7, 2010, Copper Valley filed a Notice of Intent to file an application for an original license and requested to use the Commission's Alternative Licensing Process, which was granted on June 7, 2010. On April 13, 2010, Copper Valley filed a Pre-Application Document including a Preliminary Draft Environmental Assessment for the project. Copper Valley filed their license application on August 29, 2011. On December 9, 2011, the Commission issued a notice of application accepted for filing and solicited comments and final terms and conditions. In January and February of 2012, several resources agencies filed for extensions of time to file comments and terms and conditions. The Commission granted these requests on February 4, 2012.

k. This application has been accepted for filing and is now ready for environmental analysis (EA).

l. At this time, we anticipate the need to prepare a draft and final EA. The draft EA will be sent to all persons and entities on the Commission's service and mailing lists for the project. The EA will include our recommendations for operating procedures, as well as environmental protection and enhancement measures that should be part of any license issued by the Commission. All recipients will then have 30 days to review the EA and file written comments with the Commission. All comments on the draft EA filed with the Commission will be

considered in preparation of the final EA.

The major milestones, including those for preparing the EA, are as follows:

Major milestone	Date
License Application Filed	August 30, 2011.
Ready for Environmental Analysis Notice Issued	December 9, 2011.
Deadline for Filing Comments, Recommendations and Agency Terms and Conditions/Prescriptions—extended	April 6, 2012.
Draft EA Issued	September 2012.
Comments on draft EA Due	October 2012.
Final EA Issued	December 2012.

Dated: July 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17652 Filed 7–19–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0704; FRL–9520–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects; EPA ICR No. 2195.04, OMB Control No. 2070–0169.* This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 20, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2011–0704, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: OPP Docket, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC., and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Field & External Affairs Division (7605P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–347–8515; fax number: 703–305–5884; email address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval under the PRA, 44 U.S.C. 3501 *et. seq.,* and according to the procedures prescribed in 5 CFR 1320.12. On December 7, 2011 (76 FR 76399), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OPP–2011–0704, which is available at *http://www.regulations.gov,* or in person viewing at the OPP Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPP Docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects.

ICR numbers: EPA ICR No. 2195.04, OMB Control No. 2070–0169.

ICR Status: OMB approval of this ICR is currently scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). As revised in 2006, EPA regulations at 40 CFR part 26 protect subjects of ''third-party'' human research (i.e., research that is not conducted or supported by EPA). In addition to other protections, the regulations require affected entities to submit information to EPA and an Institutional Review Board (IRB) prior to initiating, and to EPA upon the completion of, certain studies that involve human research participants. The information collection activity consists of activity-driven reporting and recordkeeping requirements for those who intend to conduct research for submission to EPA under the pesticide laws. If such research involves intentional dosing of human subjects, these individuals (respondents) are required to submit study protocols to EPA and a cognizant local Human Subjects IRB before such research is initiated so that the scientific design and ethical standards that will be employed during the proposed study

may be reviewed and approved. Also, respondents are required to submit information about the ethical conduct of completed research that involved human subjects when such research is submitted to EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2119 hours per response for research involving exposure of human subjects, and 12 hours per response for all other submitted research with human subjects. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Any entity that submits protocols and study reports for environmental research involving human subjects under FIFRA and/or FFDCA.

Estimated Number of Respondents: 7 annually for research involving intentional exposure of human subjects, and 10 annually for all other submitted research with human subjects.

Frequency of Response: Occasional.

Estimated Total Annual Burden: 14,833 hours for research involving intentional exposure of human subjects, and 120 hours for all other submitted research with human subjects.

Estimated Total Annual Cost: $1,299,759, which includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 5,619 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a decrease in the anticipated number of responses per year. This change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17746 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0121; FRL 9520–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exclusion Determinations for New Nonroad Spark-Ignited Engines, New Nonroad Compression-Ignited Engines, and New On-Road Heavy Duty Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 20, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2005–0121, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket Center (mailcode 28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, Mail Code 6403J NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 28, 2012 (77 FR 18803), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0121, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Exclusion Determinations for New Nonroad Spark-ignited Engines, New Nonroad Compression-ignited Engines, and New On-road Heavy Duty Engines (Renewal).

ICR numbers: EPA ICR No. 1852.05, OMB Control No. 2060–0395.

ICR Status: This ICR is scheduled to expire on July 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the provisions of the Clean Air Act (CAA), the Administrator is required to promulgate regulations to control air pollutant emissions from motor vehicles and nonroad engines, as defined in the CAA. Motor vehicles and non-road engines not meeting the applicable definitions are excluded from compliance with current regulations. A manufacturer may make an exclusion determination by itself; however, manufacturers and importers may request EPA to make such determination to ensure that their determination does not differ from the Agency's. To request an exclusion determination, manufacturers submit a letter with a description of the engine and/or vehicle (engine type, horsepower rating, intended usage, etc.) and sales brochures or pictures. The request must be submitted to either the Gasoline Engine Compliance Center (GECC) or the Diesel Engine Compliance Center

(DECC). Both Centers are part of Compliance Division, Office of Transportation and Air Quality. GECC and DECC use this information to determine whether the engine or vehicle is excluded from compliance with one or more emission regulations. GECC and DECC then store the data in its internal files, and make it available to the public upon request under the Freedom of Information Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers of new nonroad spark-ignited engines, new nonroad compression-ignited engines, and new on-road heavy duty engines.

Estimated Number of Respondents: 2.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 11.

Estimated Total Annual Cost: $1,040 includes $11 in annualized capital or O&M costs. *Changes in the Estimates:* There is a decrease of 58 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a lower estimated number of respondents.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17745 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0902; FRL–9520–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Consumer Research through Focus Groups to Develop Improved Labeling for Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 20, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2011–0902, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs Regulatory Public Docket (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ryne Yarger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–1193; fax number: (703) 305–5884; email address: *yarger.ryne@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 7, 2011 (76 FR 76399), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2011–0902, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OPP Regulatory Public Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OPP Regulatory Public Docket is 703–305–5805.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Consumer Research through Focus Groups to Develop Improved Labeling for Pesticide Products.

ICR numbers: EPA ICR No. 2367.02, OMB Control No. 2070–0175.

ICR Status: This ICR is scheduled to expire on August 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA intends to renew a voluntary information collection for consumer research involving the use of focus groups to test various versions of pesticide product labels and other informational materials intended for the general public. Every pesticide product must bear a label containing the

information specified by the Federal Insecticide, Fungicide, and Rodenticide Act as established in EPA's labeling regulations at 40 CFR 156.10. Pesticide product labels provide critical safety information and directions for use to avoid harm to human health and the environment. The purpose of this research is to identify the consumer's understanding of the information on a pesticide product label to assure that the consumer can effectively use this information to select the pesticide product most likely to meet their needs, and to assure that the consumer can readily understand label instructions regarding the safe use, handling, storage, and disposal of a pesticide product.

Without knowledge concerning the consumer's perspective and interpretation of the information on the label, EPA cannot judge if the proposed content and design of the label is effectively conveying useful safety and performance information to the consumer. Testing of existing and/or proposed label statements in realistic situations with typical consumers via focus groups can provide valuable qualitative information about the clarity and understandability of a pesticide product label, what these label statements are likely to communicate to consumers, and how consumers use the information to make purchasing decisions. The collected information will be used to inform the Agency on the need for and nature of potential revisions to EPA's policy, guidance, and regulations related to pesticide label language and design label metrics, and to aid in the creation of other user-friendly consumer information materials.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this ICR are members of the general public who volunteer to participate in a focus group.

Estimated Number of Annual Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $6,014. There are no operational or maintenance costs associated with the collection of this activity.

Changes in the Estimates: There is an increase of 120 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects EPA's actual costs of conducting a series of 10 focus groups in 2010. This change is an adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17748 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0120; FRL 9520–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 20, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2005–0120, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket Center (mailcode 28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, Mail Code 6403J NW., Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 28, 2012 (77 FR 18802), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0120, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (Renewal).

ICR numbers: EPA ICR No. 1285.08, OMB Control No. 2060–0132.

ICR Status: This ICR is scheduled to expire on July 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Nonconformance penalty (NCP) provisions allow a manufacturer to introduce into commerce heavy-duty engines, heavy-duty vehicles and/or light-duty trucks which fail to conform to certain emission standards, upon payment of a monetary penalty. The information collected from manufacturers electing to utilize NCPs includes a description of their product(s) and test data to verify compliance. This information is collected by the Diesel Engine Compliance Center (DECC) in the Compliance Division (CD), Office of Transportation and Air Quality, Office of Air and Radiation (OAR), of the U.S. Environmental Protection Agency. DECC uses this information to ensure that manufacturers are in compliance with Clean Air Act and EPA regulations and are paying the appropriate penalties. Besides DECC, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes. Non-Confidential Business Information (CBI) information may be disclosed upon request under the Freedom of Information Act to trade associations, environmental groups, and the public.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers of heavy-duty engines, heavy-duty vehicles and light-duty trucks.

Estimated Number of Respondents: 1.

Estimated Total Average Number of Responses for Each Respondent: 24.

Frequency of Response: Annual, quarterly, and on occasion.

Estimated Total Annual Hour Burden: 541.

Estimated Total Annual Cost: $ 81,163, which includes $39,344 in annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 637 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. While the previous ICR estimated that 2 manufacturers would utilize NCPs, with three engine families each. Based on past and current experience, EPA now estimates that only one manufacturer will use NCPs with a total of 4 engine families. The average burden per response has decreased slightly, reflecting an increase use of electronic methods for reporting and recordkeeping.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–17744 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9004–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/09/2012 through 07/13/2012 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA Headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov.*

EIS No. 20120230, Draft EIS, USACE, CA, Sierra Vista Specific Plan Development, Implementation, City of Roseville, Placer County, CA, *Comment Period Ends:* 09/04/2012, *Contact:* James T. Robb 916–557–7610.

EIS No. 20120231, Draft EIS, USFS, NE, Fall River West and Oglala Geographic Areas Allotment Management Planning, Pine Ridge and Fall Ranger Districts, Nebraska National Forest, Dawes and Sioux Counties, NE and Fall River County, SD, *Comment Period Ends:* 09/04/2012, *Contact:* Carla Loop 308–432–0336.

EIS No. 20120232, Final EIS, RUS, MN, Hampton—Rochester—La Crosse Transmission System Improvement Project, Construction and Operation of a 345-kilovolt Transmission Line and Associated Facilities between Hampton, MN and La Crosse, WI, *Review Period Ends:* 08/20/2012, *Contact:* Stephanie A. Strength 202–720–0820.

EIS No. 20120233, Draft EIS, USFS, NM, Prehistoric Trackways National Monument Resource Management Plan, Implementation, Dona Ana County, NM, *Comment Period Ends:* 10/22/2012, *Contact:* Lori Allen 575–525–4454.

EIS No. 20120234, Final EIS, NPS, KY, Big South Fork National River and Recreation Area Obed Wild and Scenic River Non-Federal Oil and Gas Management Plan, Implementation, KY and TN, *Review Period Ends:* 08/20/2012, *Contact:* Dan Niosi 303–969–2068.

EIS No. 20120235, Draft Supplement, FRA, CA, California High-Speed Train (HST): Fresno to Bakersfield Section High-Speed Train, Reintroducing Alignment Alternatives and an Additional Alternative through the Bakersfield Area, USACE Section 10 and 404 Permits, Fresno, Kings, Tulare, and Kern Counties, CA, *Comment Period Ends:* 09/20/2012, *Contact:* David Valenstein 202–493–6381.

EIS No. 20120236, Draft Supplement, USFS, MT, Beaverhead-Deerlodge National Forest Land and Resource Management Plan, To Comply District

of Montana Court Order, To Apply the Minimization Criteria to Three Routes Specifically Designated in the Forest Plan as Exceptions to Winter, Non-motorized Areas, Beaverhead and Jefferson Counties, MT, *Comment Period Ends:* 09/04/2012, *Contact:* Patty Bates 406–683–3900.

EIS No. 20120237, Final Supplement, FHWA, CO, U.S. 550 South Connection to U.S. 160, Updated Information, to U.S. 160 from Durango to Bayfield, U.S. Army COE Section 404 Permit, La Plata County, CO, *Review Period Ends:* 08/20/2012, *Contact:* Stephanie Gibson 720–963–3013.

EIS No. 20120238, Draft EIS, GSA, DHS, NY, Public Sale of Plum Island Animal Disease Center, Long Island Sound, Suffolk County, NY, *Comment Period Ends:* 09/20/2012, *Contact:* John Dugan 617–565–5700. The U.S. General Services Administration and U.S. Department of Homeland Security are Joint Lead Agencies for this project.

EIS No. 20120239, Draft Supplement, USACE, CA, Folsom Dam Modification Project Approach Channel, Providing New or Additional Information on the Design and Means to Construct the Auxiliary Spillway Approach Channel, Placer and El Dorado Counties, CA, *Comment Period Ends:* 09/10/2012, *Contact:* Todd Plain 916–557–7461.

Amended Notices

EIS No. 20120161, Draft EIS, USFS, NM, North Fork Eagle Creek Wells, Special Use Authorization Project, Operation of Four Municipal Supply Water Wells, Lincoln National Forest, Lincoln County, NM, *Comment Period Ends:* 09/07/2012, *Contact:* Dave Warnack 575–257–4095 Revision to FR Notice Published 07/13/2012; Retracting the Extended Comment Period per the request of USDA, the original comment period ended 07/09/2012.

EIS No. 20120175, Draft EIS, USFWS, DE, Prime Hook National Wildlife Refuge, Development of a Comprehensive Conservation Plan, Implementation, Sussex County, DE, *Comment Period Ends:* 08/27/2012, *Contact:* Thomas Bonetti 413–253–8307. Revision to FR Notice Published 06/08/2012; Extending Comment Period from 08/06/2012 to 08/27/2012.

EIS No. 20120191, Draft EIS, USACE, CO, Chatfield Reservoir Storage Reallocation, To Reallocate 20,600 acre-feet of Storage from the Exclusive Flood Control Pool to the Conservation Pool, Funding, Jefferson/Douglas Counties, CO, *Comment Period Ends:* 09/06/2012, *Contact:* Gwyn Jarrett 402–995–2717. Revision to FR Notice Published 06/15/2012; Extending the Comment Period from 08/14/2012 to 09/06/2012.

EIS No. 20120201, Draft Supplement, USACE, IN, Indianapolis North Flood Damage Reduction, Modifications to Project Features and Realignment of the South Warfleigh Section, Marion County, IN, *Comment Period Ends:* 08/31/2012, *Contact:* Michael Turner 502–315–6900. Revision to FR Notice Published 06/29/2012; Extending Comment Period from 08/13/2012 to 08/31/2012.

EIS No. 20120229, Draft EIS, FHWA, CA, I–710 Corridor Project, Improvements from Ocean Boulevard in the City of Long Beach to State Route 60 in East Los Angeles, Funding, Los Angeles County, CA, *Comment Period Ends:* 08/29/2012, *Contact:* Cesar E. Perez 916–498–5065, Revision to FR Notice Published 07/13/2012; Extending Comment Period to 08/29/2012.

Dated: July 17, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–17740 Filed 7–19–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 18, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0233.

Title: Part 36, Separations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,162 respondents; 1,582 responses.

Estimated Time per Response: 22 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 161, 201–205 and 218–220 of the Communications Act of 1934, as amended.

Total Annual Burden: 34,804 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information provided. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: After the 60 day comment period is complete; the Commission is seeking OMB approval for a revision in order to obtain the full three year clearance from them.

The Commission is revising this information collection due to Commission rule changes that no longer require price-cap regulated carriers and competitive carriers to file cost or loop count data. These rule changes resulted in a decrease of 36,479 hours due to a decrease in the estimated number of respondents (835) and responses (5,980).

In order to determine which carriers are entitled to universal service support, all rate-of-return incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by 47 CFR 63.611 of the Commission's rules for each of its study areas and, if applicable, for each wire center (that term is defined in 47 CFR Part 54). Loops are the telephone lines running from the carrier's switching facilities to the customer. The loop cost and loop count information are to be filed annually with NECA by July 31st of each year, and may be updated quarterly pursuant to 47 CFR 63.612. Pursuant to section 36.613, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission by October 1 of each year. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in *47 CFR 51.5 <http://web2.westlaw.com/find/default.wl?mt=Federal Government&db=1000547&docname=47CFRS51.5&rp=%2ffind%2fdefault.wl&findtype=L&ordoc=0346830476&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=C4FF690D&rs=WLW12.04>* of the Commission's rules. Quarterly loop cost and loop count data filings are voluntary for rate-of-return carriers.

The reporting requirements are necessary to implement the congressional mandate for universal service. The requirements are necessary to verify that rate-of-return LECs are eligible to receive universal service support. Information filed with NECA pursuant to section 36.611 is used to calculate universal service support payments to eligible carriers. Without this information, NECA and USAC (Universal Service Administration Company) would not be able to calculate such payments to eligible carriers.

OMB Control Number: 3060–0824.

Title: Service Provider Identification Number (SPIN) and Contact Form.

Form Number: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 5,000 respondents; 5,000 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 153, 154 and 254 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,500 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information provided. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for a revision in order to obtain the full three year clearance from them. There is no change to the previous burden estimates.

As detailed in the Supporting Statement that will be submitted to the OMB for review and approval, the Commission proposes changes to certain parts of FCC Form 498 to improve the efficiency of administering the universal service support mechanism. Specifically, the Commission is proposing:

(1) Adding an additional field for a company's Federal Registration Number (FRN);

(2) Adding a column for the Study Area Code Company Name;

(3) Adding the ability for a carrier to designate an alternate bank account for the payment of BEAR funds;

(4) Adding a box and supplemental sheet that allows respondents to include information about affliates;

(5) Updating the Principal Communications Types to include additional business types as listed on the FCC Form 499–A; and

(6) Adding a box on the form that will allow service providers to cease participation in the associated program without having to deactivate their entire SPIN. The information collected on FCC Form 498 is used by the Universal Service Administrative Company (USAC) to disburse federal universal service support consistent with the specifications of carriers and service providers who participate and receive support from any of the four universal service support programs (High-Cost, Low-Income, Rural Health Care and Schools and Libraries). FCC Form 498 submissions also provide USAC with updated contact information, enabling USAC to contact universal service fund participants when necessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–17521 Filed 7–19–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, July 17, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Comptroller of the Currency), seconded by Director Thomas M. Hoenig (Appointive), concurred in by Director Jeremiah O. Norton (Appointive), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: July 17, 2012.

Federal Deposit Insurance.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–17870 Filed 7–18–12; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 6, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Lynne Deweese and V.J. Hales as co-trustees of The Hales Survivor's Trust, individually and with Randy Deweese, Lynne Deweese, V.J. Hales, Jason Schwartz, Kimberly Schwartz, Andrea Williford, Michael Williford, and Dallas Williford,* all of Clinton, Kentucky; all as members of The Hales Family Control Group; to gain control of First Trust Financial Corporation, and thereby indirectly gain control of First Community Bank of Western Kentucky, Inc., both in Clinton, Kentucky.

Board of Governors of the Federal Reserve System, July 17, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–17692 Filed 7–19–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 19–20, 2012

In accordance with Section 271.7(d) of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 19–20, 2012.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it began in September to purchase, by the end of June 2012, Treasury securities with remaining maturities of 6 years to 30 years with a total face value of $400 billion, and to sell Treasury securities with remaining maturities of 3 years or less with a total face value of $400 billion. Following the conclusion of these purchases, the Committee directs the Desk to purchase Treasury securities with remaining maturities of 6 years to 30 years with a total face value of about $267 billion by the end of December 2012, and to sell or redeem Treasury securities with remaining maturities of approximately 3 years or less with a total face value of about $267 billion. For the duration of this program, the Committee directs the Desk to suspend its current policy of rolling over maturing Treasury securities into new issues. The Committee directs the Desk to maintain its existing policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities. These actions should maintain the total face value of domestic securities at approximately $2.6 trillion. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, July 12, 2012.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2012–17688 Filed 7–19–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLEY TERMINATIONS GRANTED

[June 1, 2012 Thru June 30, 2012]

06/01/2012

20120841	G	ValueAct Capital Master Fund. L.P.; Willis Group Holdings Public Limited Company; ValueAct Capital Master Fund, L.P.
20120862	G	Marquard & Bahls AG; GS Maritime Holding LLC; Marquard & Bahls AG.

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on June 19–20, 2012, which includes the domestic policy directive issued at the meeting, are available on the Board's Web site, *www.federalreserve.gov.* The minutes are also published in the Federal Reserve Bulletin and in the Board's Annual Report.

EARLEY TERMINATIONS GRANTED—Continued

[June 1, 2012 Thru June 30, 2012]

06/04/2012		
20120808	G	Objet Ltd.; Stratasys, Inc.; Objet Ltd.
20120858	G	America Movil, S.A.B. de CV.; Simple Mobile, LLC; America Movil, S.A.B. de C.V.
20120860	G	Green Equity Investors V, L.P.; Savers, Inc.; Green Equity Investors V, L.P.
20120864	G	The Dow Chemical Company; Dow Kokam LLC; The Dow Chemical Company.
20120865	G	Wolverine World Wide, Inc.; Collective Brands, Inc.; Wolverine World Wide, Inc.
20120869	G	Blum Strategic Partners IV, L.P.; Collective Brands, Inc.; Blum Strategic Partners IV, L.P.
20120870	G	Golden Gate Capital Opportunity Fund, L.P.; Collective Brands, Inc.; Golden Gate Capital Opportunity Fund, L.P.
20120874	G	C&J Energy Services, Inc.; Intervale Capital Fund, L.P.; C&J Energy Services, Inc.
20120875	G	Ray Investment S.a.r.l.; Platt Electric Supply, Inc.; Ray Investment S.a.r.l.
20120876	G	PFB Corporation; International Petroleum Investment Company; PFB Corporation.
20120877	G	Boyd Gaming Corporation; Peninsula Gaming Partners, LLC; Boyd Gaming Corporation.
20120881	G	Sun Capital Partners V, L.P.; Polycom, Inc.; Sun Capital Partners V, L.P.
20120882	G	Nordson Corporation; EDI Holdings, Inc.; Nordson Corporation.
20120883	G	Berkshire Hathaway Inc.; J. Stewart Bryan III; Berkshire Hathaway Inc.
20120885	G	Bed Bath & Beyond Inc.; Cost Plus, Inc.; Bed Bath & Beyond Inc.
20120888	G	Red Ventures, LLC; MasTec, Inc.; Red Ventures, LLC.
06/05/2012		
20120823	G	HealthCor Offshore, Ltd.; Allscripts Healthcare Solutions, Inc.; HealthCor Offshore, Ltd.
20120884	G	Picasso Acquisition Holding I, Inc.; TAX L.P.; Picasso Acquisition Holding 1, Inc.
20120895	G	Concho Resources, Inc.; Riverstone/Carlyle Global Energy and Power Fund IV, L.P.; Concho Resources, Inc.
06/06/2012		
20120890	G	Blackstone CQP Feeder Fund VI/BEP/BCQPL; Cheniere Energy, Inc.; Blackstone CQP Feeder Fund VI/BEP/BCQPL.
20120891	G	Precision Castparts Corp.; David W. Dickson Family Trust dated October 20, 2009; Precision Castparts Corp.
06/07/2012		
20120887	G	Ultra Clean Holdings, Inc.; HLHZ AIT Holdings, L.L.C.; Ultra Clean Holdings, Inc.
06/08/2012		
20120900	G	QUALCOMM Incorporated; Summit Microelectronics, Inc.; QUALCOMM Incorporated.
20120901	G	Graham Partners 111, L.P.; HCO Holding I Corporation; Graham Partners III, L.P.
20120925	G	Deutsche Telekom AG; Leap Wireless International, Inc.; Deutsche Telekom AG.
20120926	G	Leap Wireless International, Inc.; Deutsche Telekom AG; Leap Wireless International, Inc.
06/11/2012		
20110971	S	Johnson & Johnson; Synthes, Inc.; Johnson & Johnson.
20120850	G	Abbott Laboratories; Action Pharma A/S; Abbott Laboratories.
20120889	G	Silicon Laboratories Inc.; Ember Corporation; Silicon Laboratories Inc.
20120897	G	UANT Ventures, L.L.P.; Urology Associates of North Texas, L.L.P.; UANT Ventures, L.L.P.
20120919	G	Smart Balance, Inc.; Allan B. Hubbard; Smart Balance, Inc.
06/05/2012		
20120886	G	Trim IR Holdco, LLC; Ingersoll-Rand plc; Trim IR Holdco, LLC.
20120908	G	Green Equity Investors V, L.P.; Olympus Growth Fund V, L.P.; Green Equity Investors V, L.P.
20120911	G	Nippon Metal Industry Co., Ltd.; Nisshin Steel Co., Ltd.; Nippon Metal Industry Co., Ltd.
20120912	G	AEA Investors Small Business Fund II LP; David J. Bishop; AEA Investors Small Business Fund II LP.
20120913	G	Porsche Automobil Holding SE; Investindustrial IV L.P.; Porsche Automobil Holding SE.
20120915	G	Sanford; Medcenter One Health Systems; Sanford.
20120917	G	TCV VII, L.P.; ABS Capital Partners V, L.P.; TCV VII, L.P.
20120922	G	Teledyne Technologies, Inc.; LeCroy Corporation; Teledyne Technologies, Inc.
20120929	G	New Enterprise Associates 10, L.P.; Bloom Energy Corporation; New Enterprise Associates 10, L.P.
20120933	Y	LIN TV Corp.; New Vision Television, LLC; LIN TV Corp.
20120942	G	AG Private Equity Partners IV, L.P.; Benihana Inc.; AG Private Equity Partners IV, L.P.
06/13/2012		
20120207	G	The McGraw-Hill Companies, Inc.; S&P/Dow Jones Indices LLC; The McGraw-Hill Companies, Inc.
20120902	G	Delphi Automotive PLC; Bain Capital Fund VIII, L.P.; Delphi Automotive PLC.
06/15/2012		
20120787	G	Suburban Propane Partners, L.P.; Inergy, L.P.; Suburban Propane Partners, L.P.
20120932	G	Mr. Jianlin Wang; AMC Entertainment Holdings, Inc.; Mr. Jianlin Wang.
20120934	G	Starbucks Corporation; The Julie Lepinard Alpha Trust; Starbucks Corporation.
20120936	G	Monsanto Company; Gregg A. Sander; Monsanto Company.

EARLEY TERMINATIONS GRANTED—Continued

[June 1, 2012 Thru June 30, 2012]

20120937	G	TPG Partners VI, L.P.; Savers, Inc. TPG Partners VI, L.P.
20120939	G	Bain Capital Fund X, L.P.; Vestar Capital Partners III, L.P.; Bain Capital Fund X, L.P.
20120943	G	Nordson Corporation; Industrial Growth Partners III, L.P.; Nordson Corporation.
20120944	G	Valeant Pharmaceuticals International, Inc.; Water Street Healthcare Partners II, L.P.; Valeant Pharmaceuticals International, Inc.
20120949	G	GS Capital Partners VI Fund L.P.; William C. Young; GS Capital Partners VI Fund L.P.
20120950	G	DCP Midstream Partners, LP; Phillips 66; DCP Midstream Partners, LP.
20120951	G	DCP Midstream Partners, LP; Spectra Energy Corp.; DCP Midstream Partners, LP.
20120954	G	WellPoint, Inc.; Fenway Partners Capital Fund III, L.P.; WellPoint, Inc.
20120958	G	Sun Capital Partners V, L.P.; GMHC, LLC; Sun Capital Partners V, L.P.
20120967	G	Serge Godin; Logica PLC; Serge Godin.
20120968	G	Warburg Pincus Private Equity XI, L.P.; M. Brooks Smith; Warburg Pincus Private Equity XI, L.P.
06/18/2012		
20120904	G	Oracle Corporation; Vitrue, Inc.; Oracle Corporation.
20120918	G	NYSE Euronext; Alexander F. Brigham; NYSE Euronext.
20120930	G	Blackstone Capital Partners V L.P.; Alex Lee, Inc.; Blackstone Capital Partners V L.P.
20120938	G	Wells Fargo & Company; Mobilelron, Inc.; Wells Fargo & Company.
20120948	G	Stefan Kaluzny; The Talbots, Inc.; Stefan Kaluzny.
06/19/2012		
20120971	G	Marriott International, Inc.; Gaylord Entertainment Company; Marriott International, Inc.
20120972	G	Roark Capital Partners II, LP; KLH Capital, L.P.; Roark Capital Partners II, LP.
06/20/2012		
20120940	G	MHR Institutional Partners III LP; Navistar International Corporation; MHR Institutional Partners III LP.
20120956	G	Berkshire Hathaway Inc.; Meyn Holding B.V.; Berkshire Hathaway Inc.
20120960	G	Oak Hill Capital Partners III, L.P.; Sandler Capital Partners V, L.P.; Oak Hill Capital Partners III, L.P.
20120962	G	Isabelle Holding Company Inc.; Interline Brands, Inc.; Isabelle Holding Company Inc.
06/21/2012		
20120898	G	Valline S.r.l.; EKR Holdings, Inc.; Valline S.r.l.
20120941	G	Cameco Corporation; Advent Voltage (Cayman) Limited; Cameco Corporation.
20120985	G	Behrman Capital PEP L.P.; Behrman Capital III L.P.; Behrman Capital PEP L.P.
06/22/2012		
20120965	G	Thomas H. Lee Equity Fund VI, L.P.; GP Capital Partners III, L.P.; Thomas H. Lee Equity Fund VI, L.P.
20120973	G	Lipizzaner, Inc.; Ariat International, Inc.; Lipizzaner, Inc.
20120976	G	Thomas H. Lee Equity Fund VI, L.P.; Party City Holdings Inc.; Thomas H. Lee Equity Fund VI, L.P.
20120977	G	Flowers Foods, Inc.; Albert R. Lepage; Flowers Foods, Inc.
20120978	G	Flowers Foods, Inc.; Andrew P. Barowsky; Flowers Foods, Inc.
20120987	G	GENI VAR Inc.; WSP Group plc; GENIVAR Inc.
20120988	G	Snow Phipps II, L.P.; Sentinel Capital Partners III, L.P.; Snow Phipps II, L.P.
20120991	G	H.I.G. Bayside Debt & LBO Fund II, L.P.; Arctic Glacier Income Fund; H.I.G. Bayside Debt & LBO Fund II, L.P.
20120994	G	Odyssey Investment Partners Fund IV, LP; Saw Mill Capital Partners, L.P.; Odyssey Investment Partners Fund IV, LP.
20120997	G	Acosta Holdco, Inc.; Mosaic Parent Holdings, Inc.; Acosta Holdco, Inc.
06/25/2012		
20120896	G	General Cable Corporation; Rio Tinto plc; General Cable Corporation.
20120928	G	MultiCare Health System; Allen B. Miller; MultiCare Health System.
20120959	G	Maple Group Acquisition Corporation; TMX Group Inc.; Maple Group Acquisition Corporation.
20120966	G	John F. Mariani, Jr.; Gary B. Heck; John F. Mariani, Jr.
20120984	G	Harry F. Mariani; Gary B. Heck; Harry F. Mariani.
20120986	G	HDS Investment Holding, Inc.; Roark Capital Partners II, LP; HDS Investment Holding, Inc.
20120999	G	RoundTable Healthcare Partners III, L.P.; Deerfield Private Design Fund II, L.P.; RoundTable Healthcare Partners III, L.P.
20121003	G	KKR 2006 Fund, L.P.; Sonos, Inc.; KKR 2006 Fund, L.P.
20121009	G	Windjammer Senior Equity Fund III, L.P.; Riverside Capital Appreciation Fund V, L.P.; Windjammer Senior Equity Fund III, L.P.
20121010	G	Chesapeake Energy Corporation; Sundrop Fuels, Inc.; Chesapeake Energy Corporation.
06/26/2012		
20120927	G	Pearson plc; GlobalEnglish Corporation; Pearson plc.
06/27/2012		
20120995	G	General Dynamics Corporation; Jerrold L. Miller; General Dynamics Corporation.

EARLEY TERMINATIONS GRANTED—Continued

[June 1, 2012 Thru June 30, 2012]

06/29/2012		
20120974	G	Verizon Communications Inc.; Apollo Investment Fund V, L.P.; Verizon Communications Inc.
20121000	G	The Resolute Fund 11 Maritime Parntership, L.P.; Bollinger Shipyards, Inc.; The Resolute Fund II Maritime Parntership, L.P.
20121006	G	Brentwood Associates Private Equity IV, L.P.; ACI Capital America Fund, L.P.; Brentwood Associates Private Equity IV, L.P.
20121008	G	Permira IV Continuing L.P.2; Intelligrated, Inc.; Permira IV Continuing L.P.2.
20121014	G	Holly Energy Partners, L.P.; HollyFrontier Corporation; Holly Energy Partners, L.P.
20121015	G	Francisco Partners III. L.P.; Cross Match Technologies, Inc.; Francisco Partners III, L.P.
20121018	G	Wesco International, Inc.; Caxton-Iseman (Conney), L.P.; Wesco International, Inc.
20121019	G	salesforce.com, inc.; Buddy Media, Inc.; salesforce.com, inc.
20121020	G	ORG Chemical Holdings, LLC; McFerrin Dynasty Trust; ORG Chemical Holdings, LLC.
20121023	G	EQT VI (No.1) Limited Partnership; BSN medical Luxembourg Holding S.a.r.l.; EQT VI (No. 1) Limited Partnership.
20121025	G	WPP plc; General Atlantic Partners 83, LP; WPP plc.
20121031	G	Paul G. Desmarais; IntegraMed America, Inc.; Paul G. Desmarais.
20121034	G	Calumet Specialty Products Partners, L.P.; Royal Purple, Inc.; Calumet Specialty Products Partners, L.P.
20121037	G	J.H. Whitney VII, L.P.; Beecken Petty O'Keefe QP Fund II, L.P.; J.H. Whitney VII, L.P.

FOR FURTHER INFORMATION CONTACT:
Renee Chapman, Contact Representative
or
Theresa Kingsberry, Legal Assistant.
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2012–17464 Filed 7–19–12; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 121 0144]

Novartis AG; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 16, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write '' Novartis Fougara, File No. 121 0144'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/novartisfougera,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Christine Tasso (202–326–2232), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 16, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 16, 2012. Write '' Novartis Fougera, File No. 121 0144'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any '' [t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/novartisfougera* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write '' Novartis Fougera, File No. 121 0144'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Novartis AG (''Novartis'') that is designed to remedy the anticompetitive effects of Novartis's acquisition of Fougera Holdings Inc. (''Fougera'') in several generic pharmaceutical markets. Under the terms of the proposed Consent Agreement, Novartis is required to: (1) Terminate Novartis's marketing agreement with Tolmar, Inc. (''Tolmar'') with respect to the currently marketed products generic calcipotriene topical solution, generic lidocaine-prilocaine cream, and generic metronidazole topical gel (''Marketed Divestiture Products'') and return all of Novartis's rights to distribute, market, and sell the Marketed Divestiture Products to Tolmar; and (2) return all rights to develop, distribute, market, and sell the development product generic diclofenac sodium gel to Tolmar.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger executed on May 1, 2012, Novartis proposes to acquire Fougera in a transaction valued at approximately $1.525 billion (the ''Proposed Acquisition'' or ''Acquisition''). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the U.S. markets for generic calcipotriene topical solution, generic lidocaine-prilocaine cream, generic metronidazole topical gel, and diclofenac sodium gel. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the Acquisition.

The Products and Structure of the Markets

The Acquisition would reduce the number of generic suppliers in three current generic drug markets with likely anticompetitive consequences. In human pharmaceutical product markets with generic competition, price generally decreases as the number of generic competitors increases. Accordingly, the reduction in the limited number of suppliers within each relevant market has a direct and substantial effect on pricing.

Generic calcipotriene topical solution is used to treat chronic, moderately severe scalp psoriasis. Only three companies offer generic calcipotriene topical solution in the United States: Novartis, Fougera, and G & W Laboratories (''G & W''). Novartis leads the market with a 67 percent share. G & W accounts for 22 percent, while Fougera represents an 11 percent share.

Generic lidocaine-prilocaine cream is used as a local anesthetic to treat intact skin and to relieve pain from injections and surgery. Lidocaine-prilocaine is available in both 30 gram tubes and packages containing five 5 gram tubes (''5–5 tubes''). The 5–5 tubes are used only in hospitals, while the 30 gram tubes are prescribed directly to patients for home use. Fougera, Hi-Tech Pharmaceutical Co. (''Hi-Tech''), and Novartis are the only U.S. suppliers of 30 gram tubes. The market for the generic 5–5 tubes is even more concentrated as only Fougera and Novartis offer them. The Acquisition would therefore create a monopoly in the generic lidocaine-prilocaine 5–5 tube market.

Generic metronidazole topical gel is used to treat inflamed papules and pustules of rosacea, a condition that causes chronic redness of facial skin. Taro Pharmaceutical Industries (''Taro'') is the market leader with approximately 43 percent market share, Fougera has approximately 36 percent market share, Novartis has approximately 19 percent market share, and G & W has approximately 2 percent market share.

Furthermore, the Acquisition could inhibit significant future competition by reducing the number of potential suppliers in the diclofenac sodium gel market. Solaraze is a branded drug sold by Fougera that is used to treat actinic keratosis. No companies currently market a generic version of the drug, diclofenac sodium gel, in the United States. Novartis is best positioned to be the first generic entrant into this market.

Entry

Entry into the relevant markets for the sale of the products would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Entry would not take place in a timely manner because the combination of drug development times and U.S. Food and Drug Administration (''FDA'') approval requirements are likely to take at least two years.

Effects

In each of the relevant product markets, the Proposed Acquisition likely would eliminate one of a limited number of suppliers and cause significant competitive harm by facilitating price increases—or eliminating decreases—after the transaction is consummated.

In generic pharmaceuticals markets, pricing is heavily influenced by the number of competitors with sufficient

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

supply that participate in the market. Market participants consistently characterize generic drug markets as commodity markets in which the number of generic suppliers has a direct impact on pricing. Customers and competitors alike have confirmed that the price of a generic pharmaceutical product decreases with the entry of the second, third, and even fourth and fifth generic competitor. Further, customers generally believe that having at least four suppliers in a generic pharmaceutical market produces the most competitive prices.

Evidence gathered during our investigation indicates that anticompetitive effects are likely to result from a decrease in the number of independent competitors in the markets at issue. The Proposed Acquisition, by reducing an already limited number of competitors or potential competitors in each of these markets, would cause anticompetitive harm to U.S. consumers by increasing the likelihood of higher post-acquisition prices. In the market for generic calcipotriene topical solution, Novartis and Fougera are two of only three suppliers. In the lidocaine-prilocaine cream 30 gram tube market, Novartis and Fougera are two of only three suppliers of the product, and the Proposed Acquisition would eliminate Fougera as an independent competitor to Novartis leaving only Hi-Tech. In the generic lidocaine-prilocaine cream 5–5 gram tubes market, the Acquisition would result in a merger to monopoly. In the generic metronidazole gel market, Novartis and Fougera are two of four competitors, and combined, Novartis and Fougera represent 55 percent of the market. In all of these markets, industry participants have indicated that the presence of Fougera as a competitor has allowed them to negotiate lower prices.

Finally, the Acquisition would eliminate significant potential competition between Novartis and Fougera in the market for the sale of diclofenac sodium gel. Novartis, through its agreement with Tolmar, was the first to file for an approval of a generic form of Solaraze with the FDA. Thus, Fougera's brand, Solaraze, is likely to face competition solely from Novartis for a significant period of time when generic competition is introduced into this market. As a result, the Acquisition would increase the likelihood that the launch of a generic diclofenac sodium gel product would be delayed or abandoned altogether and increase the likelihood that the combined entity would delay or eliminate the substantial price competition that would have resulted from the entry of a supplier of a generic diclofenac sodium gel product.

The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Novartis is required to return certain rights related to the relevant products to Tolmar no later than ten (10) days after the Acquisition. Specifically, the proposed Consent Agreement requires that Novartis: (1) Terminate its marketing agreement with Tolmar, thereby returning all of its rights to distribute, market, and sell the Marketed Divestiture Products back to Tolmar; and (2) return all rights to develop, distribute, market, and sell generic diclofenac sodium gel to Tolmar. Tolmar is the Colorado-based developer and manufacturer of the relevant generic products.

If Novartis does not fully comply with its obligations to return all rights to generic calcipotriene topical solution, generic lidocaine-prilocaine cream, generic metronidazole topical gel, and generic diclofenac sodium gel, the Commission may appoint a trustee to effect the return of such rights.

The proposed remedy contains several provisions to ensure that the transfer of rights back to Tolmar is successful. The Consent Agreement contains an Order to Maintain Assets that requires Novartis to continue to market the Marketed Divestiture Products in a manner that maintains the full economic viability and marketability of the businesses until Tolmar directs Novartis to cease marketing the Marketed Divestiture Products or Tolmar's new marketing partner commences the distribution, marketing, and sale of the Marketed Divestiture Products.

The Commission appointed William Rahe of Quantic Regulatory Services, LLC to act as an interim monitor to assure that Novartis expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Consent Agreement. In order to ensure that the Commission remains informed about the status of the returned rights and assets, the Consent Agreement requires Novartis to file reports with the interim monitor who will report in writing to the Commission concerning performance by Novartis of its obligation under the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2012–17660 Filed 7–19–12; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: Government Accountability Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces the appointment of five new members and the reappointment of one existing member.

DATES: Appointments are effective May 1, 2012.

ADDRESSES: *GAO:* 441 G Street NW., Washington, DC 20548.

MedPAC: 601 New Jersey Avenue NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: *GAO:* Office of Public Affairs, (202) 512–4800.

MedPAC: Mark E. Miller, Ph.D., (202) 220–3700.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following:

Newly appointed members are Alice Coombs, MD, Critical Care Specialist and Anesthesiologist, South Shore Hospital; Jack Hoadley, Ph.D., Research Professor, Health Policy Institute, Georgetown University; David Nerenz, Ph.D., Director of the Center for Health Policy and Health Services Research, Henry Ford Health System; Rita Redberg, MD, Professor, Clinical Medicine, University of California at San Francisco Medical Center; and Craig Samitt, MD, President and Chief Executive Officer, Dean Health System, Inc.. Their terms will expire in April 2015. The reappointed member is Glenn M. Hackbarth, J.D., (chair).

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2012–17643 Filed 7–19–12; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Availability—New Common Format.

SUMMARY: As authorized by the Secretary of HHS, AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) for reporting patient safety events to Patient Safety Organizations (PSOs). The purpose of this notice is to announce the availability of a new Common Format—Readmissions Version 0.1 Beta for public review and comment.

DATES: Ongoing public input.

ADDRESSES: The new Common Format—Readmissions Version 0.1 Beta, version dated July 2012—and the remaining Common Formats can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Cathryn Niane, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes healthcare providers to voluntarily collect and submit in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR Part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. This collection allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems.

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other healthcare providers may assemble information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called ''patient safety work product''—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Act and Patient Safety Rule which can be accessed electronically at: *http://www.PSO.AHRQ.gov/REGULATIONS/REGULATIONS.htm.*

Definition of Common Formats

The term ''Common Formats'' refers to the common definitions and reporting formats, specified by AHRQ, that allow health care providers to collect and submit standardized information regarding patient safety events. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system; rather the formats are intended to enhance the ability of health care providers to report information that is standardized both clinically and electronically.

In collaboration with the interagency Federal Patient Safety Workgroup (PSWG), the National Quality Forum (NQF) and the public, AHRQ has developed Common Formats for two settings of care—acute care hospitals and skilled nursing facilities—in order to facilitate standardized data collection. The scope of Common Formats applies to all patient safety concerns including: Incidents—patient safety events that reached the patient, whether or not there was harm; near misses or close calls—patient safety events that did not reach the patient; and unsafe conditions—circumstances that increase the probability of a patient safety event.

AHRQ's Common Formats include:

- Event descriptions (descriptions of patient safety events and unsafe conditions to be reported);
- Specifications for patient safety aggregate reports and individual event summaries;
- Delineation of data elements to be collected for different types of events to populate the reports;
- A user's guide and quick guide, and
- Technical specifications for electronic data collection and reporting.

The technical specifications promote standardization of collected patient safety event information by specifying rules for data collection and submission, as well as by providing guidance for how and when to create data elements, their valid values, conditional and go-to logic, and reports. These specifications will ensure that data collected by PSOs and other entities have comparable clinical meaning. They also provide direction to software developers, so that the Common Formats can be implemented electronically, and to PSOs, so that the Common Formats can be submitted electronically to the PSO Privacy Protection Center (PPC) for data de-identification and transmission to the Network of Patient Safety Databases (NPSD).

Since the initial release of the Common Formats in August 2008, AHRQ has regularly revised the formats based upon public comment. Most recently, AHRQ and the PSWG developed Common Format—Readmissions Version 0.1 Beta to allow hospitals to aggregate data that describe circumstances associated with the readmission of patients. These factors include actions taken at the index hospitalization to prevent a readmission, risk factors for readmission, length of stay, presence of an adverse event, location of discharge setting, as well as other attributes. Using this standardized method of review, hospitals can identify factors associated with unnecessary readmissions. In addition, hospitals can compare their data to others and analyze trends on a community, regional, and national level. The Common Format—Readmissions Version 0.1 Beta, dated July 2012, is available at the PSO PPC Web site: *https://www.PSOPPC.ORG/web/patientsafety.*

Common Formats Development

In anticipation of the need for Common Formats, AHRQ began their development by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (e.g., from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department

of Defense (DoD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has convened the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within HHS—CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, National Library of Medicine, Office of the National Coordinator for Health Information Technology, Office of Public Health and Science, and Substance Abuse and Mental Health Services Administration—as well as the DoD and VA.

When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. In collaboration with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment. The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS).

Commenting on Common Format—Readmissions Version 0.1 Beta

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the NQF, a non-profit organization focused on health care quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF then convenes an expert panel to review the comments received and provide feedback. The NQF began this process with feedback on AHRQ's 0.1 Beta release of the Common Formats in 2008. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, revises and refines the Common Formats.

The Agency is specifically interested in obtaining feedback from both the private and public sectors on the new Common Format—Readmissions Version 0.1 Beta to guide the improvement of the formats. Information on how to comment and provide feedback on the Common Format—Readmissions Version 0.1 Beta is available at the NQF Web site for Common Formats: *http://www.Quality.forum.ORG/projects/commonformats.aspx.*

The process for updating and refining the formats will continue to be an iterative one. Future versions of the Common Formats will be developed for ambulatory settings, such as ambulatory surgery centers and physician and practitioner offices. More information on the Common Formats can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.gov/index.html.*

Dated: July 13, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–17529 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Delisting for Cause for The Steward Group PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has delisted The Steward Group PSO as a Patient Safety Organization (PSO) due to its failure to correct a deficiency. The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on June 19, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule, 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

The Steward Group PSO failed to respond to a Notice of Preliminary Finding of Deficiency sent by AHRQ pursuant to 42 CFR 3.108(a)(2) and a Notice of Proposed Revocation and Delisting sent by AHRQ pursuant to 42 CFR 3.108(a)(3)(iii)(C) which found that The Steward Group PSO failed to have, within every 24-month period following the PSO's date of initial listing, at least two bona fide contracts with different providers for the purpose of receiving and reviewing patient safety work product, and to notify AHRQ no later than 45 calendar days prior to the last day of the pertinent 24-month period that the PSO has met this requirement. The Steward Group PSO did not exercise its opportunity to be heard in writing to respond to the deficiencies specified in the notices, and has not provided any evidence of a good faith effort to correct the deficiency.

Accordingly, AHRQ has revoked the listing of The Steward Group PSO, PSO number P0088, a component entity of The Steward Group, Inc., effective at 12:00 Midnight ET (2400) on June 19, 2012.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.PSO.AHRQ.gov/index.html.*

Dated: July 3, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–17532 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the Coalition for Quality and Patient Safety of Chicagoland (CQPS PSO)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41,42 U.S.C. 299b–21–b–26, provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. AHRQ has accepted a notification of voluntary relinquishment from the Coalition for Quality and Patient Safety of Chicagoland (CQPS PSO) of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and, reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on May 24, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Coalition for Quality and Patient Safety of Chicagoland (CQPS PSO), PSO number P0090, which is a component entity of Project Patient Care, Inc., to voluntarily relinquish its status as a PSO. Accordingly, the Coalition for Quality and Patient Safety of Chicagoland (CQPS PSO) was delisted effective at 12:00 Midnight ET (2400) on May 24, 2012.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: July 13, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–17531 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Information on Quality Measurement Enabled by Health IT

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

ACTION: Notice of Request for Information (RFI).

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) requests information from the Public, including diversified stakeholders (health information technology (IT) system developers, including vendors; payers, quality measure developers, end-users, clinicians, health care consumers) regarding current successful strategies and challenges regarding quality measurement enabled by health IT. Quality measurement—the assessment of the timeliness, completeness and appropriateness of preventive services, diagnostic services, and treatment provided in health care—has been most generally conducted via paper chart information capture, manual chart abstraction, and the analysis of administrative claims data.

DATES: Submit comments on or before August 20, 2012.

ADDRESSES: Electronic responses are preferred and should be addressed to *HIT-PTQ@AHRQ.hhs.gov*. Non-electronic responses will also be accepted. Please send by mail to: Rebecca Roper, Agency for Healthcare Research and Quality, Attention: HIT-Enabled QM RFI Responses, 540 Gaither Road, Room 6000, Rockville, MD 20850, Phone: 301–427–1535.

FOR FURTHER INFORMATION CONTACT: Please identify in the subject line of emails that you are inquiring about the ''Question about HIT-enabled QM RFI''. Contact Angela Nunley, email: *Armela.Nunley@AHRQ.hhs.gov,* Phone: 301–427–1505, or, Rebecca Roper, email: *Rebecca.ROPER@AHRQ.hhs.gov,* Phone: 301–427–1535.

SUPPLEMENTARY INFORMATION:

Background

Health information technology (IT), such as, electronic health records (EHR) which may include clinical decision support and health information exchange, has seen a tremendous increase in adoption in recent years. Some institutions have successfully used health IT to generate health IT-enabled quality measures which may be retooled versions of established paper-based or administrative data-driven quality measures or (preferably) they are ''de novo'' quality measures that were developed with the capabilities of health IT in mind. These new health IT-enabled quality measures seek to leverage the use of electronic clinical data capture, analysis and reporting to measure and report electronically enabled quality measures in order to facilitate improvements in the quality of care provided. AHRQ supports research to improve health care quality through enhancements in the safety, efficiency, and effectiveness of health care available to all Americans. Through this RFI, AHRQ is seeking information related to successful strategies and/or remaining challenges encountered regarding the development of health IT-enabled quality measure development and reporting.

Health IT has the potential to advance quality measurement and reporting through the use of efficient automated data collection, analysis, processing,

and its ability to facilitate information exchange among and across care settings, providers, and patients. Quality measurement enabled by health IT, referred to as health IT-enabled quality measurement, is an emerging field. There are numerous perspectives on how to achieve the future state of quality measurement. These varied perspectives sometimes include competing choices and challenges: (1) Underdeveloped or unavailable infrastructure (e.g., whether the measure set should be extensive or parsimonious); (2) incompleteness of the measure set (e.g., developing measures that matter to consumers, how to measure value); and (3) technology challenges (e.g., how might unstructured data be captured in the EHR to be used for measurement, if and how to integrate patient-generated and clinician-generated data).

In preparation for the development of this RFI, AHRQ generated a high-level overview of the current state of quality measurement through health IT, challenges facing the advancement of quality measurement enabled by health IT, a partial catalog of current efforts seeking to address those challenges, and, possibilities for the next generation of health IT-enabled quality measurement. This report, ''An environmental snapshot—Quality Measurement Enabled by Health IT: Overview, Possibilities, and Challenges'' can be found at *http://healthit.AHRQ.gov/HealthITEnabledQualityMeasurement/Snapshot.pdf.*

AHRQ is committed to garnering further insight in order to facilitate meaningful advancements in the next generation of quality measurement. Through this Request for Information AHRQ is seeking information on the building blocks of health IT-enabled quality measurement in terms of perspectives, practicalities, and priorities. Responses will be used in conjunction with deliberative activities to inform the development of a summary report to be released to the public approximately in summer 2013.

Respondents should note that this Request for Information is completely voluntary; respondents are welcome to address as many of the questions posed as they wish. AHRQ would appreciate if you clearly indicate the number of the question area to which you are providing a response. This RFI is for planning purposes only.

Responses to this are not offers, cannot be accepted by the Government to form a binding contract, and are not intended to influence regulation.

Questions Regarding Quality Measurement Enabled by Health IT

1. Briefly describe what motivates your interest in clinically-informed quality measures through health information technology. To what extent is your interest informed by a particular role (e.g., provider, payer, government, vendor, quality measure developer, quality improvement organization, standards organization, consumer advocate) in this area?

2. Whose voices are not being heard or effectively engaged at the crucial intersection of health IT and quality measurement? What non-regulatory approaches could facilitate enhanced engagement of these parties?

3. Some quality measures of interest have been more difficult to generate, such as measures of greater interest to consumers, measures to assess value, specialty-specific measures, measures across care settings (i.e., measures enabled by health information exchange), and measures that take into account variations in risk. Describe the infrastructure that would be needed to ensure development of such measures.

4. What health IT-enabled quality measures, communication channels, and/or technologies are needed to better engage consumers either as contributors of quality information or as users of quality information?

5. How do we motivate measure developers to create new health IT-enabled quality measures (which are distinct from existing measures which were retooled into electronically-produced quality measures) that leverage the unique data available through health IT? Please provide examples of where this has been successfully. What new measures are in the pipeline to leverage data available through health IT?

6. Describe how quality measurement and ''real-time'' reporting could inform clinical activity, and the extent to which it could be considered synonymous with clinical decision support.

7. Among health IT-enabled quality measures you are seeking to generate in a reliable fashion, including the currently proposed Meaningful Use Stage 2 measure set, what types of advances and/or strategies for e-measure generation if pursued, would support more efficient generation of quality measures?

8. Many EHR, HIE, and other health IT vendors are developing software code to support measures. Tools such as the Measure Authoring Tool (MAT) were created to improve efficiencies in the process of creating and implementing eMeasures. What additional approaches might be used to enable consistent, accurate, and efficient quality measurement when using health IT?

9. How do you see the establishment and adoption of data standards impacting the future of health IT-enabled quality measurement? For what types of quality measures should a combination of natural language processing and structured data be considered?

10. Much support has been voiced for the need of longitudinal data in quality measurement. What are the strengths and weaknesses of different information architectures and technologies to support health IT-enabled quality measurement across time and care settings? How can data reuse (capture once, use many times) be supported in different models? What examples might you provide of successful longitudinal health IT-enabled quality measurement (across time and/or across multiples care settings)?

11. What are the most effective means by which to educate providers on the importance of health IT-enabled quality measurement and how clinical information is used to support health IT-enabled quality measurement and reporting? How can providers be better engaged in the health IT-enabled quality measurement process?

12. What is the best way to facilitate bi-directional communication between vendors and measure developers to facilitate collaboration in health IT-enabled measure development?

13. To what extent do you anticipate adopting payment models that use quality measurement informed by electronic clinical records (as opposed to exclusively using claims data)? What strategies are you pursuing to gain access to clinical data and test the reliability of health IT-enabled clinical outcome measures? How do you anticipate sharing quality measure results with consumers and other stakeholders?

14. What tools, systems, and/or strategies has your organization been using to aggregate information from various EHRs and other health IT for use in quality measurement? What strategies is your organization pursuing to move toward greater automation in quality measurement?

15. Please describe scalable programs, demonstrations, or solutions (domestic or internationally) that show material progress toward quality measurement enabled by health IT.

Reference Material

Anderson KM, Marsh CA, Isenstein H, Flemming AC, Reynolds J. An Environmental Snapshot: Health IT-

enabled Quality Measurement: Efforts, Challenges, and Possibilities (Prepared by Booz Allen Hamilton, under Contract No. HHSA2902009000241.) AHRQ Publication No. 12–0061–EF. Rockville, MD: Agency for Healthcare Research and Quality. July 2012. See: *http://healthit.ahrq.gov/HealthITEnabledQualityMeasurement/Snapshot.pdf*

Dated: July 13, 2012.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2012–17530 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (last amended at **Federal Register**, Vol. 76, No. 203, pp. 65197–65199, dated October 20, 2011) is amended to change the organizational title from the Office of Clinical Standards and Quality (OCSQ) to the Center for Clinical Standards and Quality. The organizational title change reflects the increasing breadth and importance of quality, patient safety, evidence-based coverage, and value-based purchasing programs. The administrative code is not changed and remains the same.

Part F., Section FC. 10 (Organization) is revised as follows:

Office of the Administrator (FC)
Office of Equal Opportunity and Civil Rights (FCA)
Office of Legislation (FCC)
Office of the Actuary (FCE)
Office of Strategic Operations and Regulatory Affairs (FCF)
Center for Clinical Standards and Quality (FCG)
Center for Medicare (FCH)
Center for Medicaid and CHIP Services (FCJ)
Center for Strategic Planning (FCK)
Center for Program Integrity (FCL)
Chief Operating Officer (FCM)
Office of Minority Health (FCN)
Center for Medicare and Medicaid Innovation (FCP)
Federal Coordinated Health Care Office (FCQ)
Center for Consumer Information and Insurance Oversight (FCR)
Office of Public Engagement (FCS)
Office of Communications (FCT)

Authority: 44 U.S.C. 3101)

Dated: July 11, 2012.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–17782 Filed 7–19–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal TANF Data Report, TANF Annual Report, and Reasonable Cause/Corrective Action Documentation Process-Final.

OMB No.: 0970–0215.

Description

42 U.S.C. 612 (Section 412 of the Social Security Act as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)), mandates that federally recognized Indian Tribes with an approved Tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services data on the recipients served by the Tribes' programs. This information includes both aggregated and disaggregated data on case characteristics and individualcharacteristics. In addition, Tribes that are subject to a penalty are allowed to provide reasonable cause justifications as to why a penalty should not be imposed or may develop and implement corrective compliance procedures to eliminate the source of the penalty. Finally, there is an annual report, which requires the Tribes to describe program characteristics. All of the above requirements are currently approved by OMB and the Administration for Children and Families is simply proposing to extend them without any changes.

Respondents

Indian Tribes

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Final Tribal TANF Data Report	66	4	451	119,064
Tribal TANF Annual Report	66	1	40	2,640
Tribal TANF Reasonable Cause/Corrective	66	1	60	3,960
Estimated Total Annual Burden Hours				125,664.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email:

OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–17749 Filed 7–19–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Child Abuse and Neglect Data System.

OMB No. 0980–0229.

Description: The Children's Bureau of the Administration on Children, Youth and Families in the Administration for Children and Families of the U.S. Department of Health and Human Services collects national child abuse and neglect statistics through the National Child Abuse and Neglect Data System (NCANDS). NCANDS was established in response to the 1988 amendment (Pub. L. 100–294) to the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 *et seq.*), which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports.

The 1996 CAPTA amendment (42 U.S.C. 5106a(d)) required all States that receive Basic State Grant funds to provide specific data elements, to the extent practicable, to the Federal Government. These data items were incorporated into NCANDS. Since that time, other CAPTA revisions that pertain to child welfare have been included in NCANDS. This application is related to the most recent reauthorization of CAPTA during 2010 (Pub. L. 113–320).

The CAPTA provisions included in NCANDS state that each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

1. The number of children who were reported to the State during the year as victims of child abuse or neglect.

2. Of the number of children described in paragraph (1), the number with respect to whom such reports were—

A. Substantiated;

B. Unsubstantiated; or

C. Determined to be false.

3. Of the number of children described in paragraph (2)—

A. The number that did not receive services during the year under the State program funded under this section or an equivalent State program;

B. The number that received services during the year under the State program funded under this section or an equivalent State program; and

C. The number that were removed from their families during the year by disposition of the case.

4. The number of families that received preventive services, including use of differential response, from the State during the year.

5. The number of deaths in the State during the year resulting from child abuse or neglect.

6. Of the number of children described in paragraph (5), the number of such children who were in foster care.

7.

A. The number of child protective service personnel responsible for the—

i. Intake of reports filed in the previous year;

ii. Screening of such reports;

iii. Assessment of such reports; and

iv. Investigation of such reports.

B. The average caseload for the workers described in subparagraph (A).

8. The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

9. The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

10. For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the State—

A. Information on the education, qualifications, and training requirements established by the State for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

B. Data of the education, qualifications, and training of such personnel;

C. Demographic information of the child protective service personnel; and

D. Information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

11. The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

12. The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

13. The annual report containing the summary of activities of the citizen review panels of the State required by subsection (c)(6).

14. The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

15. The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

16. The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).

The Children's Bureau proposes continue collecting NCANDS data using two files of the Detailed Case Data Component (DCDC): (1) Child File, the case-level component of NCANDS and (2) Agency File, the aggregate data component. The Children's Bureau is not proposing to continue collecting NCANDS data via the Summary Data Component (SDC), as States will no longer be using this file to submit data.

The Children's Bureau is seeking reapproval of these instruments with modifications. Modifications are being proposed to meet requirements of the amendments in the CAPTA Reauthorization Act of 2010 (Pub. L. 111–320) passed on December 20, 2010 and to clarify existing reporting. The Children's Bureau proposes to modify the Child File as follows:

- *Field 147, Report Time:* The Report Time field will collect the exact time (hour and minute) that a report was received by the hotline or other intake unit. CAPTA requires that each State submits the time from the report of abuse or neglect to the start of the initial child protective services (CPS) agency's response (42 U.S.C. 5106a(d)(8)). Currently, NCANDS only collects the date a report was received. Adding the time field will improve reporting for the Child and Family Services reviews and the GPRA Modernization Act of 2010 (Pub. L. 111–352).
- *Field 148, Investigation Start Time:* The Investigation Start Time field will collect the exact time (hour and minute) that the CPS agency's response was

initiated. CAPTA requires that each Sate report the time from the report of abuse or neglect to the start of the CPS agency response (42 U.S.C. 5106a(d)(8)). Currently, NCANDS collects the CPS response start date. Adding the time field will enable a more accurate computation of the time between receipt of the report and the start of the CPS response. This addition will improve reporting for the Child and Family Services Reviews and GPRA.

• *Field 149, Maltreatment Death Date:* The Maltreatment Death Date field will collect the exact date (day, month, and year) that a child died due to child abuse or neglect. CAPTA requires that each State report the number of deaths in the State during the year resulting from child abuse or neglect (42 U.S.C. 5106a(d)(5)). Currently, NCANDS collects that the child was determined to have died due to maltreatment, but does not collect the date of death. Because determinations of the cause of death can take several months, adding the date of death will ensure a more accurate reporting of child fatality data.

• *Field 150, Foster Care Discharge Date:* The Foster Care Discharge Date field will collect the exact date (day, month, and year) that a child exits from foster care. This field will be completed for those children who were removed from their homes and have entries in the removal date and foster care services fields. Currently, NCANDS collects the exact date (day, month, and year) that a child entered foster care, but not the exact date (day, month, and year) when the child exited foster care. This addition will improve reporting for the Child and Family Services Reviews.

The reauthorization of CAPTA asks for the number of children who are eligible for referral and the number of children referred to Part C agencies (42 U.S.C. 5106a(d)(16)).The Children's Bureau proposes to modify the Agency File by adding two new fields to meet these requirements:

• *Field 5.1, Number of Children Eligible for Referral to Agencies Providing Early Intervention Services Under Part C of the Individuals With Disabilities Education Act:* This field will collect the number of children who were the subject of a CPS response, received a disposition, and were considered by the State to be eligible for referral to Part C agencies during the reporting period.

• *Field 5.2, Number of Children Referred to Agencies Providing Early Intervention Services Under Part C of the Individuals With Disabilities Education Act:* This field will collect the number of children who were considered eligible and actually were referred to Part C agencies during the reporting period.

The information collected by NCANDS will be used to better understand the experiences of children and families served by State and local child protective services agencies and to guide policy and program development at the national and local levels. Data collected through the NCANDS will also be used to support HHS with responding to the requirements of the Government Performance and Results Act (GPRA); reporting to Congress on States' performance on national child welfare outcomes; and monitoring States through the CFSRs.

Respondents: State governments, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component Child File and Agency File	52	1	112.3	5,841

Estimated Total Annual Burden Hours: 5,841.

Additional Information: Copies of the proposed collection may be obtained by writing the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–17699 Filed 7–19–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, Part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the second 3-year cycle of case record reviews to meet the requirements for reporting under IPIA. The OCC has conducted ongoing evaluation of the case record review process to determine if ''improper authorizations for payment'' remained a suitable proxy for actual ''improper payments.'' It is OCC's determination that in some cases authorizations for payment represented the same figure as actual payments; in other cases authorizations for payment has represented a figure as much as 20% higher than actual payments. Many States reported errors found during the desk audit review process that were due to missing or insufficient documentation or other misapplication of policy, but found that families were determined to be eligible for services and that the actual payment authorized was correct. Other States reported regulatory barriers in State law which prohibits recovery of over-authorization or over-payment as the result of agency error. As such, this information collection will provide a methodology

revision that will assess errors in eligibility determinations that will compare the amount authorized for payment with the actual payment.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248
Estimated Total Annual Burden Hours:				43,613.36

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–17681 Filed 7–19–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Title: Innovative Strategies for Increasing Self-Sufficiency: Follow-Up Data Collection.

OMB No.: 0970–0397.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the Innovative Strategies for Increasing Self-Sufficiency (ISIS) demonstration and evaluation. The ISIS project will test a range of promising career pathways strategies to promote education, employment, and self-sufficiency. The major goals of the ISIS project include increasing the empirical knowledge about the effectiveness of a variety of programs for low-income individuals and families to achieve educational credentials, attain employment and advance to positions that enable self-sufficiency, as well as producing useful findings for both policymakers and program administrators.

This proposed information collection activity focuses on collecting follow-up data elements approximately one year after program enrollment. (Baseline data elements were previously collected at the time of program enrollment. A baseline information form captured basic identification, demographic, and contact information from program participants; a self-administered questionnaire captured additional information about participants related to the project goals; and baseline implementation data collection interviews collected information from knowledgeable informants about the service context for each evaluation site using a baseline implementation guide. These instruments were previously approved under OMB No. 0970–0397).

The purpose of this information collection effort is to follow up with study participants, document the experiences of program participants, examine differences in service receipt and educational experiences between program and control group members, describe the intervention as it was implemented in each site and assess the extent to which it was implemented as intended, and assess the implications for intervention scalability and sustainability.

Specifically, this data will be collected using the following instruments: (a) A follow-up survey which will be administered to all study participants approximately one year following enrollment in the study; (b) tracking letters which will be sent every four months to all study participants requesting an update of their contact information; (c) a modification to the Baseline Information Form requesting some basic information about all of the study participant's children (if applicable); (d) interview guides for the in-person visits to the intervention sites to structure discussions with program leadership/managers, instructional staff, case managers/advisors, partners and employers; (e) a brief survey for instructional staff; (f) a brief survey for case managers/advisors; and (g) in-depth interviews with a sample of study participants.

Respondents: Individuals enrolled in the ISIS demonstration programs, control group members, ISIS program/partner staff (including program leadership, case managers and instructional staff), and other local informants.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
12 Month Follow-up Survey	3,600	1	0.833	2,999
Tracking Letters	10,800	3	0.083	2,689
Baseline Information Form (Modification)	3,500	1	0.05	175
Program Leadership/Managers Interview Guide	13	1	2	26
Instructional Staff Interview Guide	21	1	2	42
Case Managers/Advisors Interview Guide	16	1	2	32
Partners Interview Guide	16	1	2	32
Employers Interview Guide	19	1	1	19
Instructional Staff Survey	26	1	0.5	13
Case Managers/Advisors Survey	24	1	0.5	12
Study Participant Interview Guide	80	1	1	80

Estimated Total Annual Burden Hours: 6,119.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer, Administration for Children and Families.

[FR Doc. 2012–17641 Filed 7–19–12; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0247]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 20, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0429. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Meetings with Sponsors and Applicants for Prescription Drug User Fee Act (PDUFA) Products—(OMB Control Number 0910–0429)—(Extension)

This information collection approval request is for FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the Agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (FDAMA), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an End-of-Phase 2 meeting and a Pre-NDA meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB control number 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

A. Request for a Meeting

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the Agency as part of an Investigational New Drug Application (IND), New Drug Application (NDA), or Biological License Application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: Form FDA 1571—OMB control number 0910 0014, and Form FDA 356h—OMB control number 0910 0338.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the Agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the Agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the Agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- The type of meeting being requested;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes from the meeting;
- A preliminary proposed agenda;
- A draft list of questions to be raised at the meeting;
- A list of individuals who will represent the sponsor or applicant at the meeting;
- A list of Agency staff requested to be in attendance;
- The approximate date that the information package will be sent to the Agency; and
- Suggested dates and times for the meeting.

This information will be used by the Agency to determine the utility of the meeting, to identify Agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

B. Information Package

A sponsor or applicant submitting an information package to the Agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or Agency. The Agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The Agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an End-of-Phase 2 meeting (§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a Pre-NDA meeting (§ 312.47(b)(2)).

Description of Respondents: A sponsor or applicant for a drug or biological product who requests a formal meeting with the Agency regarding the development and review of a PDUFA product.

Burden Estimate: Provided below is an estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance.

C. Request for a Formal Meeting

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 975 sponsors and applicants (respondents) request approximately 2,014 formal meetings with CDER annually and approximately 127 respondents request approximately 253 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

D. Information Package

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 756 respondents submitted approximately 1,394 information packages to CDER annually and approximately 112 respondents submitted approximately 203 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the Agency.

As stated earlier, the guidance provides information on how the Agency will interpret and apply section 119(a) of FDAMA, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47

and 312.82). The information collection provisions in § 312.47 concerning End-of-Phase 2 meetings and Pre-NDA meetings have been approved by OMB (OMB control number 0910 0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request.

In the **Federal Register** of March 20, 2012 (77 FR 16235), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Meeting requests and information packages	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests:					
CDER	975	2.06	2,014	10	20,140
CBER	127	1.99	253	10	2,530
Total					22,670
Information Packages:					
CDER	756	1.84	1,394	18	25,092
CBER	112	1.81	203	18	3,654
Total					28,746
Grand Total					51,416

Dated: July 13, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–17557 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 8, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ACPS-CP@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: During the first session, the committee will discuss the uses and limitations of in vitro dissolution testing and propose future direction for evaluation including possible research. During the second session, the committee will receive an update on the FDA's recently posted draft guidances for industry on biosimilar products. This will be an awareness topic and there will not be formal Committee discussion or recommendation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 1, 2012. Oral presentations from the public will be scheduled between approximately 11 a.m. to 12 noon for the first session, and 3:45 p.m. to 4:15 p.m. for the second session. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 24, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may

conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 25, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 16, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–17667 Filed 7–19–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program (OMB No. 0915–0327)—[Revision]

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a Pharmaceutical Pricing Agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula. Covered entities which choose to participate in the section 340B Drug Pricing Program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(9) of the PHS Act to notify manufacturers of the identities of covered entities and the mandate of section 340B(a)(5)(A)(ii) to establish a mechanism to ensure against duplicate discounts and the ongoing responsibility to administer the 340B Drug Pricing Program while maintaining efficiency, transparency and integrity, the HRSA Office of Pharmacy Affairs (OPA) developed a process of registration of covered entities to enable it to address those mandates.

Enrollment/Registration

To enroll and certify the eligible federally funded grantees and other safety net health care providers, OPA requires entities to submit administrative information (e.g. shipping and billing arrangements, Medicaid participation), certifying information and signatures from appropriate grantee level or entity level authorizing officials and state/local government representatives. The purpose of this registration information is to determine eligibility for the 340B Drug Pricing Program. This information is entered into the 340B database by entities and verified by OPA staff according to 340B Drug Pricing Program requirements. Accurate records are critical to implementation of the 340B Drug Pricing Program legislation, especially to prevent diversion and duplicate discounts. To maintain accurate records, 340B statute also requires that entities recertify eligibility annually and that they notify the program of updates to any administrative information that they submitted when initially enrolling into the program. The burden requirement is low for recertification and for submitting change requests.

Contract Pharmacy Self-Certification

In order to ensure that drug manufacturers and drug wholesalers recognize contract pharmacy arrangements, covered entities that elect to utilize one or more contract pharmacies are also required to submit general information about the arrangements and to certify that signed agreements are in place with those contract pharmacies.

Pharmaceutical Pricing Agreement

In accordance with the guidance found in the May 7, 1993, **Federal Register**, Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a Pharmaceutical Pricing Agreement (the ''Agreement'') with the Secretary of Health and Human Services (the ''Secretary'') in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the average manufacturer price (''AMP'') decreased by a rebate percentage.

The estimates of annualized burden are as follows:

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HOSPITAL ENROLLMENT, ADDITIONS & RECERTIFICATIONS					
340B Program Registrations & Certifications for Hospitals	546	1	546	2.0	1,092.0
Certifications to Enroll Hospital Outpatient Facilities	606	1	606	0.5	303.0
Hospital Annual Recertification	4,842	1	4,842	0.5	2,421.0

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
REGISTRATIONS AND RECERTIFICATIONS FOR ENTITIES OTHER THAN HOSPITALS					
340B Registrations for Community Health Centers	253	1	253	1.0	253.0
340B Registrations for Family Planning Programs, STD/TB Clinics and Various Other Eligible Entity Types	353	1	353	1.0	353.0
Community Health Center Annual Recertification	4,507	1	4,507	0.5	2,253.5
Family Planning Annual Recertification	3,879	1	3,879	0.5	1,939.5
STD & TB Annual Recertification	2,754	1	2,754	0.5	1,377.0
Annual Recertification for entities other than Hospitals, Community Health Centers, Family Planning, STD or TB Clinics	1,174	1	1,174	0.5	587.0
CONTRACTED PHARMACY SERVICES REGISTRATIONS					
Contracted Pharmacy Services Registration	2500	1	2500	1.0	2500.0
OTHER INFORMATION COLLECTIONS					
Submission of Administrative Changes for any Covered Entity	2,500	1	2,500	0.5	1,250.0
Submission of Administrative Changes for any Manufacturer	350	1	350	0.5	175.0
Pharmaceutical Pricing Agreement	200	1	200	1.0	200.0
Total	24,464		24,464		14,704.0

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 16, 2012.

Jennifer Riggle,

Deputy Director, Office of Management.

[FR Doc. 2012–17777 Filed 7–19–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Faculty Loan Repayment Program (OMB No. 0915–0150)—[Revision]

Under the Health Resources and Services Administration (HRSA) Faculty Loan Repayment Program, degree-trained health professionals from disadvantaged backgrounds may enter into a contract under which the Department of Health and Human Services will make payments on eligible educational loans in exchange for a minimum of 2 years of service as a full-time or part-time faculty member of an accredited health professions college or university. Applicants must complete an application and provide all other required documentation, including information on all eligible educational loans.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Online Application	304	1	304	1	304
Institution/Loan Repayment Employment Form	*304	*1	304	1	304
Authorization to Release Information Form	304	1	304	.25	76
Total	912				684

*Respondent for this form is the institution for the applicant.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 12, 2012.

Jennifer Riggle,

Deputy Director, Office of Management.

[FR Doc. 2012–17776 Filed 7–19–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034)—[Revision]

The Health Education Assistance Loan (HEAL) program provided federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program the following forms are utilized: the Lenders Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The annual estimate of burden is as follows:

HRSA Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	15	1.00	15	0.133	2.00
Borrower's Deferment Request:					
Borrowers	28	1.00	28	0.166	5.00
Employers	23	1.21	28	0.083	3.00
Borrower Loan Status Update	5	15.00	75	0.166	13.00
Loan Purchase/Consolidation	2	2.50	5	0.066	0.33
TOTAL	73		151		23.33

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 12, 2012.

Jennifer Riggle,

Deputy Director, Office of Management.

[FR Doc. 2012–17774 Filed 7–19–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Change in State Title V Maternal and Child Health Block Grant Allocations

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice seeks comments on proposed changes in the State Title V Maternal and Child Health (MCH) Block Grant allocations. Through the Health Resources and Services Administration's Maternal and Child Health Bureau (MCHB), Title V MCH Block Grant funds are allocated to States based in part on a calculation of the number of children living in poverty (in an individual State) as compared to the total number of children living in poverty in the United States, using data for the number of children in poverty in each State from the U.S. Census Bureau's official decennial census. As the Census Bureau has replaced the decennial census long-form sample questionnaire with the American Community Survey (ACS), MCHB likewise plans to use the ACS as its source for this data. The ACS offers broad, comprehensive information on social, economic, and housing data and is designed to provide this information at many levels of geography. ACS child poverty estimates are produced annually and will allow the Block Grant allocation proportions to be updated more frequently than every 10 years. The Census Bureau produces annual State-level poverty estimates based on the most recent 1, 3, and 5 years of ACS data as well as annual model-based Small Area Income and Poverty Estimates (SAIPE). It is proposed that MCHB implement annual changes to the State Title V MCH Block Grant allocations using the 3-year ACS poverty estimates, wherein each annual change is buffered by sharing 2 of 3 data years in a 3-year rolling period estimate.

DATES: Interested persons are invited to comment on this proposed change. Submit written comments no later than September 18, 2012. All comments received on or before this date will be considered.

ADDRESSES: All written comments concerning this notice should be submitted to Cassie Lauver, Director, Division of State and Community Health, at the contact information below.

FOR FURTHER INFORMATION CONTACT: Anyone requesting additional details should contact Cassie Lauver, Health Resources and Services Administration, Maternal and Child Health Bureau. Ms. Lauver may be reached in one of the three following methods: (1) Via a written request addressed to: Ms. Cassie Lauver, Health Resources and Services Administration, Maternal and Child Health Bureau, Parklawn Building, Room 18–31, 5600 Fishers Lane, Rockville, Maryland 20857; (2) via

telephone at (301) 443–2204; or (3) via email at *mchbformula@hrsa.gov.* In addition, an information session with a question and answer period on the proposed change in the State Title V Maternal and Child Health Block Grant Allocations will be held approximately 2 weeks after publication of this notice. Please see *http://www.mchb.hrsa.gov* for more information. Dr. Michael C. Lu, Associate Administrator of MCHB, will serve as a presenter for this session.

SUPPLEMENTARY INFORMATION: HRSA is proposing to use the U.S. Census Bureau's ACS data to determine the annual poverty-based allocations to States under Section 502 of Title V of the Social Security Act (42 U.S.C. 702). Previously, MCHB used the child poverty data obtained from the long-form of the decennial census and the poverty-based allocation was updated every 10 years. The long-form questionnaire has been replaced by the annual ACS. Given the annual availability of updated ACS child poverty data, annual changes in the allocation proportion would enable incremental change and greater currency than updating at periodic non-annual intervals (e.g., every 5 years). State-level poverty data are annually released by the Census Bureau based on the most recent 1, 3, and 5-year ACS data and single-year Small Area Income and Poverty Estimates (SAIPE). Researchers in MCHB's Office of Epidemiology and Research (OER) evaluated the impact of using 1, 3, and 5-year ACS data and the single-year SAIPE on annual poverty-based allocation changes as well as overall allocation changes. Consistent with the Census Bureau documentation and guidelines, the poverty data are most current and least precise through the use of 1-year data and least current but most precise through the use of 5-year data. OER recommends that MCHB implement annual changes to the State Title V MCH Block Grant allocations using the 3-year ACS poverty estimates, which strike a reasonable balance between reliability (strength of 5-year estimates) and currency (strength of 1-year estimates). The 3-year estimates provide necessary stability in annual poverty-based allocation changes for all States, regardless of size, while still allowing the allocations to be responsive to changes in the distribution of children in poverty across States. Since they are not buffered as a multiyear moving period estimate, the 1-year estimates from both ACS and the model-based SAIPE introduce higher levels of volatility in annual changes of the poverty-based allocation proportions, particularly for smaller States with greater sampling error. The 5-year estimates are least current and do not provide meaningfully different stability in annual changes in comparison with the 3-year estimates. With the 3-year estimates for Fiscal Year 2013 already available, States will have ample opportunity to plan for the adjustment from the existing allocation proportions based on the 2000 census and will be aware of the poverty-based allocation proportions close to a year in advance of each subsequent fiscal year (annually released in October).

Dated: July 12, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–17736 Filed 7–19–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on August 9, 2012, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The August 9 combined meeting will include a report from the SAMHSA Administrator, an update on SAMHSA's Budget, an update on health reform and a discussion regarding the impact of federal health reform and state budgets on mental health and substance abuse programs.

The meeting is open to the public and will be held online via Microsoft Office 2007 Live Meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 1, 2012. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 1, 2012. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee web site, *http://nac.samhsa.gov/,* or by contacting Ms. Wood.

Committee Names: Substance Abuse and Mental Health Services, Administration National Advisory Council; Center for Mental Health Services National Advisory Council; Center for Substance Abuse Prevention National Advisory Council; Center for Substance Abuse Treatment National Advisory Council; SAMHSA's Advisory Committee for Women's Services; SAMHSA Tribal Technical Advisory Committee.

Date/Time/Type: Thursday, August 9, 2012, 10:00 a.m.–5:00 p.m. EDT(OPEN)

Place: Live meeting webcast: *https://e-meetings.verizonbusiness.com/nc/join.php?i=PA8938727&p=SAMHSA&t=c*

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2253 and Email: *geretta.wood@samhsa.hhs.gov.*

Summer King,

Statistician, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2012–17691 Filed 7–19–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

National Advisory Committee Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Committee on August 10, 2012.

The meeting will include an update from the SAMHSA Administrator and discussions regarding the Quality Framework.

The meeting is open to the public and will be held online via Microsoft Office 2007 Live Meeting. Interested persons may present data, information, or views, orally or in wrtining, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 1, 2012. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 1, 2012. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee web site, *http://nac.samhsa.gov/,* or by contacting Geretta P. Wood.

Committee Name: Substance Abuse and Mental Health Services; Administration Advisory Committee for Women's Services (ACWS)

Date/Time/Type: August 10, 2012 from 10:00 a.m. to 2:00 p.m.EDT: (Open)

Place: Live meeting webcast *https://www.mymeetings.com/nc/join.php?i=PW8938916&p=7666886&t=c*

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2253 and Email: *geretta.wood@samhsa.hhs.gov.*

Summer King,

Statistician, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2012–17690 Filed 7–19–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 8, 2012.

The meeting will include updates on Project Launch and the Fetal Alcohol Syndrome Disorder Center for Excellence and discussions regarding Medicated Assisted Treatment and Pregnancy.

The meeting is open to the public and will be held online via Microsoft Office 2007 Live Meeting. Interested persons may present data, information, or views, orally or in wrtining, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 1, 2012. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 1, 2012. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Geretta P. Wood.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services (ACWS)

Date/Time/Type: August 8, 2012 from 10:00 a.m. to 5:00 p.m.EDT: (OPEN)

Place: Live meeting webcast: *https://www.mymeetings.com/nc/join.php?i=PW8938830&p=2727117&t=c*

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2253 and Email: *geretta.wood@samhsa.hhs.gov.*

Summer King,

Statistician, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2012–17689 Filed 7–19–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0043, abstracted below, that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves a certification form that applicants for the Office of Law Enforcement/Federal Air Marshal are required to complete regarding their mental health history.

DATES: Send your comments by September 18, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Pursuant to 49 U.S.C. 44917, TSA has authority to provide for deployment of Federal Air Marshals (FAMs) on passenger flights and provide for appropriate training, supervision, and equipment of FAMs. In furtherance of this authority, TSA policy requires that applicants for the Office of Law Enforcement/Federal Air Marshal positions meet certain medical and mental health standards.

In order to evaluate whether applicants meet TSA standards, applicants must undergo a psychological evaluation determining that they do not have an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others. As part of the psychological evaluation, applicants are required to complete a certification form regarding their mental health history and provide an explanation for anything they cannot certify. Applicants will be asked whether they can certify various statements including that they have never been removed from work for medical or psychological reasons.

Upon completion, applicants submit the certification form directly to the FAMS' Medical Programs Division (FAMS MPD) for initial screening via fax, electronic upload via scanning document, mail, or in person. The FAMS MPD screens all certification forms received. Any explanations for uncertified items received will generally require further review and follow-up by a personal psychologist or psychiatrist. This certification is carefully geared to capitalize on other elements of the assessment process, such as personal interviews, physical task assessment, background investigation, as well as the other components of the medical examination and assessment. TSA estimates that there will be 600 respondents annually.

It will take each respondent approximately one hour to complete the certification form for a total annual hour burden of 600 hours.

Issued in Arlington, Virginia, on July 16, 2012.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–17754 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 16, 2012 (77 FR 28893). The proposed information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

DATES: Send your comments by August 20, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3398; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): NA.

Affected Public: Individuals, households, businesses, organizations, and State, Local or Tribal Government.

Abstract: The proposed information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

From the TSA perspective, qualitative feedback from customers and stakeholders is information that provides useful insights on their perceptions, experiences, opinions, and expectations regarding TSA products or services, provides TSA with an early warning of issues with service, and focuses attention on areas where improvement is needed regarding communication, training, or changes in operations that might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. They will also allow feedback to contribute directly to the improvement

of program management. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered by TSA. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature. Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information). Feedback collected under this generic clearance provides useful qualitative information, but it does not yield data that can be generalized to the overall population. Qualitative information is not designed or expected to yield statistically reliable or actionable results; it will not be used for quantitative information collections. Depending on the degree of influence the results are likely to have, there may be future information collection submissions for other generic mechanisms that are designed to yield quantitative results.

Below we provide the Transportation Security Administration's projected average estimates for the next three years:

Number of Respondents: 125,000.

Estimated Annual Burden Hours: An estimated 33,450 hours annually.

Issued in Arlington, Virginia, on July 16, 2012.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–17755 Filed 7–19–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Identification Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0008.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Identification Card (CBP Form 3078). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before September 18, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Abstract: CBP Form 3078, *Application for Identification Card,* is filled out in order to obtain an Identification Card which is used to gain access to CBP security areas. This form is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. CBP Form 3078 is provided for by 19 CFR part 112 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3078.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 3078.

*Type of Review: E*xtension (without change)

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: July 17, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–17693 Filed 7–19–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–28]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing

this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: July 12, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/20/2012

Unsuitable Properties

Building

New York

Bldg. 2241
Broom Blvd.
Albany NY 31704
Landholding Agency: Navy
Property Number: 77201230002
Status: Unutilized
Comments: Located in a secured area where public access is denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

South Carolina

Auto Hobby Shop
1050 Register St.
N. Charleston SC 29405
Landholding Agency: Coast Guard
Property Number: 88201230001
Status: Unutilized
Comments: Located on a secured military installation where public access is denied and no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

Land

Virginia

5 Acres
Naval Support Facility
Dahlgren VA
Landholding Agency: Navy
Property Number: 77201230001
Status: Underutilized
Comments: Land located within a restricted-access military installation where public access is denied & no alternative method to gain access w/out comprising nat'l security
Reasons: Secured Area

[FR Doc. 2012–17563 Filed 7–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5614–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2012, is 1⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2012, is 2¾ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the

month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2012, is 2¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 2¾ percent for the 6-month period beginning July 1, 2012. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2012.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.

Effective interest rate	on or after	prior to
5 1/8	Jan. 1, 2004	July 1, 2004.
5 1/2	July 1, 2004	Jan. 1, 2005.
4 7/8	Jan. 1, 2005	July 1, 2005.
4 1/2	July 1, 2005	Jan. 1, 2006.
4 7/8	Jan. 1, 2006	July 1, 2006.
5 3/8	July 1, 2006	Jan. 1, 2007.
4 3/4	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4 1/2	Jan. 1, 2008	July 1, 2008.
4 5/8	July 1, 2008	Jan. 1, 2009.
4 1/8	Jan. 1, 2009	July 1, 2009.
4 1/8	July 1, 2009	Jan. 1, 2010.
4 1/4	Jan. 1, 2010	July 1, 2010.
4 1/8	July 1, 2010	Jan. 1, 2011.
3 7/8	Jan. 1, 2011	July 1, 2011.
4 1/8	July 1, 2011	Jan. 1, 2012.
2 7/8	Jan. 1, 2012	July 1, 2012.
2 3/4	July 1, 2012	Jan. 1, 2013.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2012, is 1 5/8 percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 17, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–17781 Filed 7–19–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N099: FXES11120200000F2–112–FF02ENEH00]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan for Incidental Take of 11 Federally Listed or Petitioned Species by the Edwards Aquifer Recovery Implementation Program in 8 Texas Counties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; announcement of public meetings; and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft environmental impact statement and the draft Edwards Aquifer Recovery Implementation Program (EARIP) habitat conservation plan, under the National Environmental Policy Act of 1969. The EARIP has applied for an incidental take permit (TE63663A–0) under the Endangered Species Act of 1973, as amended, that would authorize incidental take of animal species and impacts to plant species (covered species) in all, or portions, of eight Texas counties.

DATES: *Comment Period:* To ensure consideration of your written comments, they must be received on or before close of business (4:30 p.m. C.S.T.) October 18, 2012.

Public Meetings: Seven public meetings will be held throughout the region affected by the management of the Edwards Aquifer. The dates and times for each meeting location (Corpus Christi, Kerrville, New Braunfels, San Antonio, San Marcos, Uvalde, and Victoria) will be announced in local newspapers at least 2 weeks before each meeting and will also be posted on the following Web sites: *http://www.fws.gov/southwest/es/AustinTexas/* and *http://earip.org*.

ADDRESSES: To obtain documents for review, see Reviewing Documents in **SUPPLEMENTARY INFORMATION**.

To submit comments, please use one of the following methods, and note that your comment is in reference to the Edwards Aquifer Recovery Implementation Program (TE63663A–0):

- *Email: fw2_aues_consult@fws.gov.*
- *U.S. Mail:* Field Supervisor, Austin Ecological Services Field Office, 10711 Burnett Road, Suite 200, Austin, TX 78758–4460; telephone 512/490–0057.
- *Fax:* 512/490–0974.
- We will also accept written and oral comments at the public meetings (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnett Road, Suite 200, Austin, TX 78758–4460; or by telephone 512/490–0057.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the draft environmental impact statement (DEIS) related to potential issuance of an incidental take permit (ITP) to the Applicants; and

2. The Applicants have developed a draft habitat conservation plan (DHCP) as part of the application for an ITP, which describes the measures the Applicants have agreed to take to minimize and mitigate the effects of incidental take of covered species to the maximum extent practicable pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

The Applicants have applied for an ITP (TE63663A–0) under section 10(a)(1)(B) of the Act. The requested ITP, which would be in effect for a period of 15 years if granted, would authorize incidental take of seven federally listed animal species (covered species), including the endangered fountain darter (*Etheostoma fonticola*), threatened San Marcos salamander (*Eurycea nana*), endangered San Marcos gambusia (*Gambusia georgei*), endangered Texas blind salamander (*Typhlomolge* [=*Eurycea] rathbuni*), endangered Peck's cave amphipod (*Stygobromus pecki*), endangered Comal Springs dryopid beetle (*Stygoparnus comalensis*), and the endangered Comal Springs riffle beetle (*Heterelmis comalensis*); as well as impacts to endangered Texas wild rice (*Zizania texana*). The requested ITP would also cover three petitioned species, including Edwards Aquifer diving beetle (*Haideoporus texanus*), Comal Springs salamander (*Eurycea* sp.), and Texas troglobitic water slater (*Lirceolus smithii*) in case they are listed during the duration of the ITP. As described in the DHCP, the proposed incidental take could occur in Bexar, Medina and Uvalde Counties, and portions of Atascosa, Caldwell, Comal, Guadalupe, and Hays Counties in Texas (Permit Area), and would result from activities associated with otherwise lawful activities including the regulation and use of groundwater for irrigation, industrial, municipal, domestic, and livestock purposes; the use of instream flows in the Comal River and San Marcos River for recreational uses; and other operational and maintenance activities that could affect Comal Springs, San Marcos Springs, and the associated river systems. The DEIS considers the direct, indirect, and cumulative effects of implementation of the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable.

Take of listed plant species is not defined in the Act, although the Act does identify several prohibitions. However, because covered species in the EARIP HCP include both animals and a plant, in the following discussion we use the term ''incidental take'' when discussing impacts to covered plants, as well as actual incidental take of covered animals.

Background

We published a notice of intent (NOI) to prepare an environmental impact statement in the **Federal Register** on March 5, 2010 (75 FR 10305), and held public scoping meetings in connection with the requested permit. The NOI opened a comment period that lasted until June 3, 2010. A summary of comments provided during the 2010 scoping period, which included public meetings held that year in seven Texas cities as follows: Victoria on April 1, New Braunfels on April 12, Uvalde on April 14, San Marcos on April 19, San Antonio on April 26, Corpus Christi on April 28, and Kerrville on April 29, is available on the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/* and on the Applicants' Web site at *http://earip.org.*

The Edwards Aquifer Recovery Implementation Program (EARIP) comprises a diverse group of regional stakeholders from South Central Texas that undertook a collaborative, consensus-based process to develop a plan to protect and contribute to the recovery of listed species associated with Comal and San Marcos Springs while also protecting the Edwards Aquifer (Aquifer) as a water supply source. The EARIP completed a DHCP, and the Edwards Aquifer Authority; San Antonio Water Systems; City of New Braunfels, Texas; City of San Marcos, Texas; and Texas State University (collectively, the Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an ITP under the Act. The Applicants submitted the EARIP DHCP as part of the ITP application package. We prepared a DEIS that evaluates the permit application in accordance with the requirements of NEPA.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the Covered Activities in the Permit Area pursuant to section 10(a)(1)(B) of the Act. The ITP would cover ''take'' of the Covered Species associated with otherwise lawful activities including the regulation and use of groundwater for irrigation, industrial, municipal, domestic, and livestock purposes; the use of instream flows in the Comal River and San Marcos River for recreational uses; and other operational and maintenance activities that could affect Comal Springs, San Marcos Springs, and the associated river systems. The requested term of the ITP is 15 years. To meet the requirements of a section 10(a)(1)(B) permit, the Applicants have developed and propose to implement their DHCP, which describes the conservation measures the Applicants have agreed to undertake to minimize and mitigate the impacts of the proposed incidental take of the Covered Species to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild. This alternative provides a comprehensive mitigation approach for unavoidable impacts to Covered Species and reduces potential permit processing effort for the Service.

Other Alternatives Considered

We considered three alternatives to the proposed action.

1. No Action—No ITP would be issued. Under this alternative the management and use of the Aquifer and the use of areas associated with the Comal and San Marcos Springs would continue regardless of whether a section10(a)(1)(B) permit is sought or issued. The Applicants would continue to be subject to the take prohibitions of the ESA. Where potential impacts could not be avoided, and where a Federal nexus exists, measures designed to minimize and mitigate for the impacts would be addressed through individual formal or informal consultation with the Service. In the absence of a Federal nexus, the Applicants and other parties in the region would potentially need individual section 10(a)(1)(B) incidental take permits on a project-by-project basis if their activities might result in incidental take of Federally listed species within the proposed permit area. This project-by-project approach would be more time-consuming, less efficient, and could result in an isolated, independent mitigation approach that might be less beneficial to the covered species than the proposed regional permit.

2. Another considered alternative explored the use of expanded Aquifer Storage and Recovery (ASR) operations with associated infrastructure to

supplement springflows at Comal and San Marcos Springs during drought conditions. This alternative contemplated implementation of an HCP and issuance of an ITP for covered activities similar to the preferred alternative. This alternative incorporates many of the minimization and mitigation measures proposed under the preferred alternative. This alternative differs from the preferred alternative primarily in the mechanism by which enhanced springflows would be achieved. This alternative relies on storage of Aquifer water in underground ASR facilities located in Bexar and Wilson Counties during periods of normal or above-normal precipitation. These stored waters would then be pumped through water transmission pipelines during drought conditions to be injected into recharge features in Comal County to supplement springflows at Comal and San Marcos Springs. This alternative achieves similar simulated springflows at Comal and San Marcos Springs when modeled over the period of record as the preferred alternative, though the construction, operation, and maintenance of the infrastructure required to supplement springflows has the potential to negatively affect additional listed species within the project study area, and there are unanswered questions related to the effects to water quality of storage and reuse of Aquifer water.

3. A third alternative contemplated regulatory approaches restricting region-wide Aquifer pumping to maintain springflows protective of the Covered Species. No HCP would be implemented under this alternative, and no ITP would be issued. Simulated springflows believed to be protective of the covered species during drought conditions could be maintained under this alternative, though the indirect and cumulative effects resulting from the proposed pumping restrictions and the costs associated with developing alternative water sources for human use would be expected to have significant negative socioeconomic impacts throughout the region. Because no ITP would be issued, the Applicants would continue to be subject to the take prohibitions of the ESA, and a project-by-project approach to mitigation of unavoidable impacts to listed species would be more time-consuming, less efficient, and could result in an isolated independent mitigation approach that might be less beneficial to the covered species than the proposed regional permit.

Reviewing Documents

You may obtain copies of the DEIS and DHCP on the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/* or the EARIP Web site at *http://earip.org.*

Alternatively, you may obtain CD-ROMs with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling 512/490–0057; or faxing 512/490–0974. A limited number of printed copies of the DEIS and DHCP are also available, by request, from Mr. Zerrenner. Copies of the DEIS and DHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

- Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240;
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102;
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: June 7, 2012.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2012–17610 Filed 7–19–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L16100000.DP0000]

Notice of Availability of the Prehistoric Trackways National Monument Draft Resource Management Plan and Draft Environmental Impact Statement, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Prehistoric Trackways National Monument (Monument), and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes this notice of the Draft RMP/EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Monument's Draft RMP/EIS by any of the following methods:

- *Email: BLM_NM_LCDO_Comments@blm.gov.*
- *Fax:* 575–525–4412; Attention: Lori Allen.
- *Mail:* BLM Las Cruces District Office, Attention: Lori Allen, Prehistoric Trackways Project Lead, 1800 Marquess Street, Las Cruces, NM 88005.

Copies of the Monument's Draft RMP/EIS are available at the Las Cruces District Office at the above address or online at: *http://www.blm.gov/nm/st/en/fo/Las_Cruces_District_Office/trackways_rmp.html.*

FOR FURTHER INFORMATION CONTACT: Lori Allen, Prehistoric Trackways Project Lead, telephone 575–525–4454; address 1800 Marquess Street, Las Cruces, NM

88005; email *ldallen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 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: Congress created the Monument with the passage of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) (the Act). The Monument encompasses an area of about 5,280 acres of land that contains Paleozoic-Era fossilized footprints, plants, and wood dating back about 280 million years and that is located 10 miles northwest of Las Cruces, New Mexico. The BLM subsequently included the Monument in its National Landscape Conservation System. The BLM has prepared this Draft RMP/EIS to provide management guidance for the 5,280 acres of Federal land within the Monument. The Draft RMP will provide a comprehensive management plan for the long-term protection and management of the Monument. It describes the appropriate uses and management of the Monument, consistent with the provisions of the Act, and would replace the 1993 Mimbres RMP for this specific location. The four alternatives analyzed in detail in the Draft RMP/EIS are: Alternative A (No Action Alternative), which would continue existing management decisions; Alternative B, which would emphasize resource preservation and reduce human intrusion; Alternative C (the BLM's preferred alternative), which would provide for protection of the resources while allowing compatible uses; and Alternative D, which would allow greater opportunity for public interaction and uses while following the constraints of the Act. As required by the Act, 789 acres of the Robledo Mountains Wilderness Study Area that are within the Monument and the overlapping Area of Critical Environmental Concern would not be affected by this designation. The designating Act withdraws the Monument from the following: (1) Entry, appropriation, or disposal under the public land laws; (2) Location, entry, and patent under the mining laws; and (3) Operation of the mineral leasing laws, geothermal leasing laws, and minerals materials laws. The RMP process began with a Notice of Intent published in the **Federal Register** on January 5, 2010 (75 FR 431). This announced a 30-day public comment period, during which the BLM held a public meeting in Las Cruces to introduce the public to the planning process and solicit comments. On September 22, 2010, the BLM held a public workshop to re-engage the public with the RMP and to verify that there were a sufficient range of alternatives.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2.

Jesse Juen,

State Director, New Mexico.

[FR Doc. 2012–17576 Filed 7–19–12; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

IDAHO: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey and metes and bounds survey of a portion of the subdivision of section 6, T. 7 N., R. 23 E., of the Boise Meridian, Idaho, Group Number 1343, was accepted April 17, 2012.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 28, T. 4 S., R. 14 E., of the Boise Meridian, Idaho, Group Number 1370, was accepted May 9, 2012.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The supplemental plat was prepared to show amended lottings in sec. 6, T. 44 N., R. 5 W., Boise Meridian, Idaho Group Number 1372, was accepted April 19, 2012.

The plat representing the dependent resurvey of portions of the subdivisional lines and subdivision of sections 27 and 28, and subdivision of sections 8 and 15, and the further subdivision of sections 27 and 28, T. 36 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1338, was accepted May 15, 2012.

The plat representing the dependent resurvey of a portion of the east boundary, T. 33 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1328, was accepted

May 23, 2012.

The plat representing the dependent resurvey of portions of the west and south boundaries, and subdivisional lines, T. 34 N., R. 3 W., of the Boise Meridian, Idaho, Group Number 1328, was accepted May 23, 2012.

This survey was executed at the request of the U.S.D.A. Forest Service to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the west and south boundaries and survey of the subdivisional lines of sections 30 and 31, and the subdivision of section 30, T. 29 N., R. 9 E., of the Boise Meridian, Idaho, Group Number 1324, was accepted May 25, 2012.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North (north boundary) and east boundary, and a portion of the subdivisional lines of T. 29 N., R. 7 E., of the Boise Meridian, Idaho, Group Number 1324, was accepted May 25, 2012.

Dated: July 9, 2012.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2012–17760 Filed 7–19–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900116100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana RAC will be held on September 19, 2012, in Miles City, Montana. The meeting will start at 8:00 a.m. and adjourn at approximately 3:30 p.m.

ADDRESSES: When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana, 59301, (406) 233–2831, *mark_jacobsen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 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: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: July 9, 2012.

Diane Friez,

Eastern Montana — Dakotas District Manager.

[FR Doc. 2012–17712 Filed 7–19–12; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NRSS–GRD–10780; 2360–N003–NMM]

Proposed Information Collection; Request for Comments

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on February 28, 2013. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before September 18, 2012.

ADDRESSES: Please send your comments on the IC to Edward O. Kassman, Jr., Regulatory Specialist, Energy and Minerals Branch, Geologic Resources Division, National Park Service, P.O. Box 25287, Lakewood, Colorado 80225; or via fax at (303) 987–6792; or via email at *Edward_Kassman@nps.gov*. Please reference ''1024–0064, 36 CFR Part 9, Subpart A—Mining and Mining Claims, 36 CFR Part 9, Subpart B—Non-Federal Oil and Gas Rights'' in the subject line of your comments. Please send a copy of your comments to Madonna Baucum, Acting Information Collection Clearance Officer, National Park Service, 1201 Eye St. NW., MS–1242, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email).

FOR FURTHER INFORMATION CONTACT: Edward O. Kassman, Jr., Regulatory Specialist, Energy and Minerals Branch, Geologic Resources Division, National Park Service, P.O.Box 25287, Lakewood, Colorado 80225; (303) 969–2146, fax (303) 987–6792, or via email at *Edward_Kassman@nps.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NPS regulates mineral development activities inside park boundaries pursuant to rights associated with mining claims and non-Federal oil and gas rights under regulations codified at 36 CFR Part 9, Subpart A (''9A Regulations''), and 36 CFR Part 9, Subpart B (''9B Regulations''), respectively. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS promulgated the 9A Regulations pursuant to congressional authority granted under the Mining in the Parks Act of 1976, 16 U.S.C. 1901 *et seq.,* and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916, 16 U.S.C. 1 *et seq.,* and individual enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries. The regulations require operators to submit specific technical information describing their future development plans including steps to mitigate the impacts of operations. NPS uses the information to evaluate proposed operations, ensure that all necessary mitigation measures are employed to protect park resources and values, and ensure compliance with all applicable laws and regulations.

II. Data

OMB Control Number: 1024–0064.

Title: 36 CFR Part 9, Subpart A—Mining and Mining Claims, 36 CFR Part 9, Subpart B—Non-Federal Oil and Gas Rights.

Form(s): None.

Type of Request: Extension of a previously approved collection of information.

Description of Respondents: Businesses (one-fourth medium to large publicly owned companies and three-fourth private entities).

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Response: On occasion.

Activity	Annual responses	Avg. time /response (hr)	Additional 10% for minor correspondence	Total annual burden hours
(1) 36 CFR Part 9, Subpart B for Non-Federal Oil and Gas Operations in the National Park System	20	160	160 + 16 = 176	3,520
(2) 36 CFR Part 9, Subpart A—Mining and Mining Claims	4	160	160 + 16 = 176	704
Total	24			4,224

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 11, 2012.

Madonna L. Baucum,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–17303 Filed 7–19–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–BISO–0412–10010; 2310–0046–422]

Final Environmental Impact Statement for the Oil and Gas Management Plan at Big South Fork National River and Recreation Area and Obed Wild and Scenic River, Tennessee and Kentucky

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for the Oil and Gas Management Plan (Plan) for BISO, Tennessee & Kentucky, and OBED, Tennessee. The Plan will guide the various actions that could be implemented for current and future management of oil and gas at these park units. It provides guidance for activities taken by owners and operators of private oil and gas rights to ensure these activities are conducted in a manner that protects park resources and values, visitor use and experience, and human health and safety.

DATES: The NPS will execute a Record of Decision (ROD) [no sooner than 30 days following publication by the Environmental Protection Agency of its Notice of Availability of the FEIS/Plan in the **Federal Register**.]

ADDRESSES: The FEIS/Plan is available in electronic format online at *http://parkplanning.nps.gov/biso_obri_final_ogmp.* A limited number of compact discs (CDs) and hard copies of the FEIS/Plan are also available at the BISO headquarters, 4564 Leatherwood Road, Oneida, TN 37841; and OBED headquarters, 208 North Maiden St, Wartburg, Tennessee 37887. Hard copies are also available for review in the following libraries:

McCreary County Public Library

6 North Main
Whitley City, KY 42653

Oneida Public Library

290 South Main Street
Oneida, TN 37841–2607

Fentress County Public Library

306 South Main Street,
Jamestown, TN 38556–3845.

Wartburg Public Library

514 Spring Street,
Wartburg, TN 37887.

Oak Ridge Public Library

1401 Oak Ridge Turnpike,
Oak Ridge, TN 37830.

You may also request a CD or hard copy by writing the Superintendent of BISO or the Unit Manager of OBED at the above addresses; or by phone at (423) 569–9778 and (423) 346–6294, respectively.

SUPPLEMENTARY INFORMATION: The FEIS/Plan responds to, and incorporates, agency and public comments received on the draft plan/EIS, which was available for public review from June 15, 2011 through August 16, 2011. Five public meetings were held from July 18 through 22, 2011 to gather input on the draft plan/EIS. Twenty-four pieces of correspondence were received during the public review period. NPS responses to substantive agency and public comments are provided as Appendix O of the final plan/EIS.

The FEIS/Plan evaluates three alternatives for managing oil and gas in BISO and OBED. The NPS preferred alternative is ''Alternative C: Comprehensive Implementation of 9B Regulations, New Management Framework for Plugging and Reclamation, and Establishment of Special Management Areas.'' This alternative includes proactive enforcement of the NPS regulations pertaining to non-federal oil and gas operations (Title 36 of the Code of Federal Regulations (CFR), Part 9 Subpart B) and existing plans of operations; clear communication with the public and operators about current legal and policy requirements; increased inspections and monitoring to identify sites that are found to be impacting, or threatening to impact park resources beyond the operations area to bring these sites into compliance; focusing staff resources on the implementation and compliance with the regulatory framework; a new management framework for efficiently completing compliance processes necessary for plugging and reclamation of wells; and establishment of 'Special Management Areas' to provide protection for areas where park resources and values are particularly susceptible to adverse impacts from oil and gas development. When approved, the Plan will guide oil and gas management in BISO and OBED over the next 15 to 20 years.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Tom Blount, Big South Fork National River

and Recreation Area and Obed Wild and Scenic River Chief of Resources, 4564 Leatherwood Road, Oneida, TN 37841; (423) 569–9778.

The responsible official for this FEIS/Plan is the Regional Director, Southeast Region, NPS, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 25, 2012.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2012–17677 Filed 7–19–12; 8:45 am]

BILLING CODE 4210–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–10806; 1730–SZM]

Notice of September 10, 2012, Meeting of the Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the Two Hundred Eighty-Fifth Meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The public meeting of the Cape Cod National Seashore Advisory Commission will be held on Monday, September 10, 2012, at 1:00 p.m. (Eastern).

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667.

Agenda: The September 10, 2012, Commission meeting will consist of the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (May 21, 2012)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   - Update on Dune Shacks
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Wind Turbines/Cell Towers
   - Shorebird Management Planning
   - Highlands Center Update
   - Alternate Transportation funding
   - Ocean stewardship topics—shoreline change
   - Pilgrim Power Station and Disaster Response Planning
   - Herring Cove Beach/revetment
   - Review of seashore houses, leasing, and demolition
   - Climate Friendly Parks
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, at (508) 771–2144.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 16, 2012.

George E. Price, Jr.,

Superintendent, Cape Cod National Seashore.

[FR Doc. 2012–17734 Filed 7–19–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Second Review)]

Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Folding Gift Boxes From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on folding gift boxes from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Effective Date: July 6, 2012.

FOR FURTHER INFORMATION CONTACT: Angela M.W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On July 6, 2012, the Commission determined that the domestic interested party group response to its notice of institution (77 FR 19714, April 2, 2012) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 2, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the

[1] A record of the Commissioners= votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 7, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 7, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 16, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17701 Filed 7–19–12; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the responses submitted by Harvard Folding Box Company, Inc. and Graphic Packaging International, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–709 (Third Review)]

Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Certain Seamless Carbon and Alloy Steel, Standard, Line, and Pressure Pipe from Germany.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on certain seamless carbon and alloy steel, standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 6, 2012.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at http://edis.usitc.gov.

SUPPLEMENTARY INFORMATION:

Background. On July 6, 2012, the Commission determined that the domestic interested party group response to its notice of institution (77 FR 19711, April 2, 2012) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 27, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 1, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 1, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and

[1] A record of the Commissioners= votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by United States Steel Corp. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: July 16, 2012

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17702 Filed 7–19–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–786]

Certain Integrated Circuits, Chipsets, & Products Containing Same Including Televisions; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order against certain integrated circuits, chipsets, and products containing the same including televisions, imported by respondents MediaTek Inc. of Hsinchu City, Taiwan and Zoran Corporation of Sunnyvale, California.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> Unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on July 12, 2012. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on August 13, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–786'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–17700 Filed 7–19–12; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2010–8 CRB DD 2005–2008 (MW)]

Distribution of the 2005, 2006, 2007 and 2008 Digital Audio Recording Technology Royalty Funds for the Musical Works Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of a proceeding to determine the distribution

of the digital audio recording technology royalty fees in the 2005, 2006, 2007 and 2008 Musical Works Funds. The Judges are also announcing the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying $150 filing fee, if applicable.

DATES: Petitions to Participate and the filing fee, if applicable, are due no later than August 20, 2012.

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee, if applicable, may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, if applicable, must be addressed to: Copyright Royalty Board, P.O. 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, if applicable, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, if applicable, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist. Telephone: (202) 707–7658. Telefax: (202) 252–3423 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (''AHRA''), Public Law 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution to eligible claimants. 17 U.S.C. 1005, 1007. Royalties are divided into two funds: The Sound Recordings Fund (66 ⅔%) and the Musical Works Fund (33 ⅓%). These fees in turn are allocated to specific subfunds. 17 U.S.C. 1006(b). The Musical Works Fund, which is the subject of this notice, is divided equally between the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b)(2).

Distribution of these fees may occur in one of two ways. The interested copyright parties within each subfund may negotiate the terms of a settlement as to the division of royalty funds. If, after any such agreements, funds remain in dispute, the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. 17 U.S.C. 1006(c) & 1007(c).

On April 14, 2011, the Judges issued an order granting certain claimants' (*i.e.,* Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency, Inc.) request for 95% of Digital Audio Recording Technology (''DART'') musical works royalty funds for 2005 through 2008. *Order Granting Claimants' Request for Partial Distribution of 2005 through 2008 DART Musical Works Funds Royalties, Docket No. 2010–8 CRB DD 2005–2008 (MW).* In that order the Judges stated that the claimants did not represent that the requested fees were not subject to controversy. Moreover, the Judges have not received any motions for final distribution with respect to the remaining royalties. Therefore, the Judges determine that a controversy exists with respect to some or all of the remaining DART Musical Works Funds Royalties for 2005 through 2008. Today's notice commences a proceeding to determine the proper distribution of those remaining funds.

Commencement of Proceeding

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that, for the reasons stated above, a controversy exists with respect to the distribution of the remaining 2005, 2006, 2007 and 2008 DART Musical Works Funds Royalties. The Judges are consolidating the consideration of the distribution of the 2005, 2006, 2007 and 2004 DART Musical Works Funds into a single proceeding because they anticipate that the parties involved and the issues regarding the distribution of the royalty fees will be similar, if not the same, for each year. Moreover, due to the relatively small amount of funds for each year, consolidation provides a cost savings to the parties and promotes administrative efficiencies.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2), which is available at *http://www.loc.gov/cgi-bin/formprocessor/crb/cfr-crb.pl?&urlmiddle=1.0.3.9.4.0.177.1&part=351&section=1&prev=&next=2.* Participants also must identify by year each subfund in the Musical Works Fund to which they are asserting a claim to royalties (*i.e.,* Music Publishers or Writers, or both). Petitions to Participate submitted by interested parties whose claims do not exceed $1,000 [1] must contain a statement that the party will not seek a distribution of more than $1,000. No filing fee is required for these parties. Interested parties with claims exceeding $1,000, however, must submit a filing fee of $150 with their Petition to Participate or it will be rejected. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the ''Copyright Royalty Board.'' If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed. In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. Any party that is an individual may represent herself or himself. Further procedural matters, including scheduling, will be addressed after Petitions to Participate have been filed.

Dated: July 16, 2012.

William J. Roberts, Jr.,

Copyright Royalty Judge.

[FR Doc. 2012–17680 Filed 7–19–12; 8:45 am]

BILLING CODE 1410–72–P

OFFICE OF MANAGEMENT AND BUDGET

Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments: Development of the Joint Strategic Plan on Intellectual Property Enforcement

AGENCY: Office of the U.S. Intellectual Property Enforcement Coordinator, Executive Office of the President.

ACTION: Request for written submissions from the public; Extension of comment period.

SUMMARY: The Federal Government is starting the process of developing a new Joint Strategic Plan on Intellectual Property Enforcement. By committing to common goals, the U.S. Government will more effectively and efficiently combat intellectual property

[1] The Copyright Royalty Judge Program Technical Corrections Act, Public Law 109–303, changed the amount from $10,000 to $1,000.

infringement. In this request for comments, the U.S. Government, through the Office of the U.S. Intellectual Property Enforcement Coordinator (''IPEC''), invites public input and participation in shaping the Administration's intellectual property enforcement strategy.

The Office of the U.S. Intellectual Property Enforcement Coordinator was established within the Executive Office of the President pursuant to the Prioritizing Resources and Organization for Intellectual Property Act of 2008, Public Law 110–403 (Oct. 13, 2008) (the ''PRO IP Act''). Pursuant to the PRO IP Act, IPEC is charged with developing the Administration's Joint Strategic Plan on Intellectual Property Enforcement for submission to Congress every three years. In carrying out this mandate, IPEC chairs an interagency intellectual property enforcement advisory committee comprised of Federal departmental and agency heads whose respective departments and agencies are involved in intellectual property enforcement.

This request for comments and recommendations as IPEC develops a new enforcement strategy is divided into three parts. In the first section titled ''Strategy Recommendations,'' IPEC requests detailed recommendations from the public regarding specific recommendations for improving the U.S. Government's intellectual property enforcement efforts. In the second section titled ''Threat Assessment,'' IPEC seeks written submissions from the public regarding existing and emerging threats to the protection of intellectual property rights and the identification of threats to public health and safety and the U.S. economy resulting from intellectual property infringement. In the third section titled ''Optional Questions,'' IPEC seeks written submissions from the public to assist IPEC and agencies in the development of specific action items. Responses to this request for comments may be directed to either, or both, of the two sections described above.

This request for comments was previously published in the **Federal Register** on June 26, 2012 (77 FR 38088). This notice extends the period for public comments to August 10, 2012.

DATES: Submissions must be received on or before August 10, 2012, at 11:59 p.m.

ADDRESSES: All submissions should be electronically submitted to *http://www.regulations.gov.* If you are unable to provide submissions to regulations.gov, you may contact the Office of the U.S. Intellectual Property Enforcement Coordinator at *intellectualproperty@omb.eop.gov* using the subject line ''Development of the Joint Strategic Plan on Intellectual Property Enforcement'' or (202) 395–1808 to arrange for an alternate method of transmission. The regulations.gov Web site is a Federal E-Government Web site that allows the public to find, review and submit comments on documents that have published in the **Federal Register** and that are open for comment. Submissions filed via the regulations.gov Web site will be available to the public for review and inspection. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary business information.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Intellectual Property Enforcement Coordinator, at *intellectualproperty@omb.eop.gov* or (202) 395–1808.

SUPPLEMENTARY INFORMATION: Through the PRO IP Act, Congress established the IPEC, to serve as the lead office within the Executive Office of the President responsible for formulating and implementing a Joint Strategic Plan to improve the effectiveness of the U.S. Government's efforts to protect the rights of intellectual property owners and to reduce the costs of and threats posed by intellectual property infringement, in the U.S. and in other countries. IPEC seeks public input, in the form of written comments, on the formulation of a Joint Strategic Plan and on the U.S. Government's intellectual property enforcement efforts.

I. Strategy Recommendations

IPEC requests written submissions from the public that provide specific recommendations for significantly improving the U.S. Government's intellectual property enforcement efforts. Important to the development of an effective enforcement strategy, is ensuring that any approaches that are considered to be particularly effective as well as any concerns with the present approach to intellectual property enforcement are understood by policymakers. Recommendations may include, but need not be limited to: Legislation, regulation, guidance, executive order, Presidential memoranda, or other executive action, including, but not limited to, changes to agency policies, practices or methods. Recommendations should include a detailed description that addresses the following points: Issue, agencies necessary to address the issue, and recommendation for addressing the issue identified. If a submission includes multiple recommendations, IPEC requests that the submission rank the recommendations in order of priority.

In addition to the foregoing general request, IPEC is seeking information and/or recommendations in response to the questions set out in section III below to assist IPEC in developing new enforcement strategy action items that further the priorities identified in the Joint Strategic Plan. The submission of responses to one or more of the questions in section III is entirely optional.

II. Threat Assessment

Emerging and Future Threats

The issues, threats and challenges that pertain to ensuring adequate and appropriate enforcement of intellectual property are changing rapidly. Since the inaugural Joint Strategic Plan was released in June 2010, new threats have emerged that warrant inclusion among the priorities identified in the forthcoming Joint Strategic Plan. Therefore, IPEC welcomes information pertaining to and, to the extent practicable, recommendations for combating emerging or future threats to American innovation and economic competitiveness posed by violations of intellectual property rights over the next five to ten years.

Threats to Health and Safety and the U.S. Economy

IPEC seeks written submissions from the public identifying the costs to the U.S. economy resulting from infringement of intellectual property rights, both direct and indirect, including any impact on the creation or maintenance of jobs. In addition, IPEC seeks written submissions identifying threats to public health and safety posed by intellectual property infringement, in the U.S. and internationally. IPEC also welcomes submissions on the economic costs of enforcing intellectual property rights.

Submissions directed at the economic costs resulting from violations of intellectual property rights must clearly identify: (1) The type of intellectual property protection at issue, *e.g.,* trademark, copyright, patent, trade secret or other (2) the methodology used in calculating the estimated costs and any critical assumptions relied upon, (3) identify the source of the data on which the cost estimates are based, and (4) provide a copy of, or a citation to, each such source of information.

Submissions directed at the economic costs resulting from enforcement of intellectual property rights must clearly

identify: (1) The type of intellectual property protection at issue, e.g., trademark, copyright, patent, trade secret or other (2) the methodology used in calculating the estimated costs and any critical assumptions relied upon, (3) identify the source of the data on which the cost estimates are based, and (4) provide a copy of, or a citation to, each such source of information.

Submissions directed at threats to public health or safety must: (1) Include a detailed description of the threat, (2) identify the source of the information demonstrating the existence of the threat, and (3) provide a copy of, or a citation to, each such source of information.

III. Optional Questions

1. How can international regulatory and law enforcement collaboration and information sharing be enhanced to address cross-border intellectual property infringement?

2. What legal or operational changes might be made, or collaborative steps undertaken between federal agencies and the private sector, to streamline or improve the efficacy of enforcement efforts directed at protecting intellectual property rights?

3. What measures can be taken by the private sector to share actionable information on entities engaging in or supporting infringement of intellectual property rights?

a. To the extent necessary, what government safeguards and conditions would be useful to facilitate sharing of such information?

4. What information developed from law enforcement and intelligence community threat assessments would be beneficial to the private sector in order to mitigate the risk of trade secret theft and economic espionage?

5. What additional measures by the U.S. Government would most significantly enhance efforts to combat trade secret theft and economic espionage?

6. When goods are imported into the United States, U.S. Customs and Border Protection (''CBP'') and other federal agencies charged with enforcing intellectual property rights and ensuring the safety of products entering the stream commerce, *e.g.,* U.S. Food and Drug Administration and the Consumer Product Safety Commission, engage in a risk-based assessment of the level of risk that a shipment contains violative goods., and decides whether to inspect the shipment based on this risk determination. What steps can federal agencies and the private sector take to improve the risk assessment process so that high risk shipments may be quickly identified and segmented from lower risk shipments?

7. What authentication tools and track and trace technologies would significantly enhance federal efforts to identify suspect counterfeit or pirated goods?

8. In a global economy that increasingly utilizes Internet based e-commerce and mobile platforms for transactions, the number of shipments sent through international mail and express carrier services has dramatically grown in recent years. Accordingly, law enforcement efforts directed at interdicting infringing goods shipped in the express and international mail environments have resulted in significant increases to seizure levels of infringing goods shipped through these modes of transit. What steps could be undertaken by CBP, its partner U.S. Government agencies, and the private sector to further improve detection of express carrier and international mail shipments containing infringing goods?

9. Are there ways in which CBP could improve its intellectual property rights e-recordation system to enhance ease of use and make it a more useful tool for intellectual property rights enforcement?

10. As laid out in IPEC's 2011 Annual Report on Intellectual Property Enforcement, using our resources as efficiently as possible is a priority. Are there additional ways in which the U.S. Government could make more efficient use of its resources in protecting intellectual property?

Background

The 2010 Joint Strategic Plan as well as information describing a number of intellectual property enforcement initiatives led by the Office of the U.S. Intellectual Property Enforcement Coordinator can be found at *http://www.whitehouse.gov/omb/intellectualproperty.* As set forth by the PRO IP Act, the objectives of the Joint Strategic Plan include:

- Reducing the supply of infringing goods, domestically and internationally;
- Identifying weaknesses, duplication of efforts, waste, and other unjustified impediments to effective enforcement actions;
- Promoting information sharing between participating agencies to the extent permissible by law;
- Disrupting and eliminating infringement networks in the U.S. and in other countries;
- Strengthening the capacity of other countries to protect and enforce intellectual property rights;
- Reducing the number of countries that fail to enforce intellectual property rights;
- Assisting other countries to more effectively enforce intellectual property rights;
- Protecting intellectual property rights in other countries by:
  - Working with other countries to reduce intellectual property crimes in other countries;
  - Improving information sharing between law enforcement agencies in the U.S. and in other countries; and
  - Establishing procedures for consulting with interested groups within other countries;
- Establishing programs to enhance the enforcement efforts of foreign governments by providing training and technical assistance designed to:
  - Enhance the efficiencies and minimize the duplication of U.S. Government training and assistance efforts;
  - Prioritize deployment of U.S. Government resources to those countries in which programs can be carried out most effectively and will have the greatest impact on reducing the number of infringing products in the relevant U.S. market, protecting the intellectual property rights of U.S. rights holders, and protecting the interests of U.S. persons otherwise harmed by infringements in other countries.

Victoria A. Espinel,

United States Intellectual Property Enforcement Coordinator, Executive Office of the President.

[FR Doc. 2012–17685 Filed 7–19–12; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration.

ACTION: Renewal of Advisory Committee on Presidential Library-Foundation Partnerships

SUMMARY: This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Library-Foundation Partnerships. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Library-

Foundation Partnerships in NARA's ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in its implementation of strategies for the efficient operation of the Presidential libraries.

SUPPLEMENTARY INFORMATION: NARA's Committee Management Officer is Mary Ann Hadyka. She can be reached at 301–837–1782.

Dated: July 16, 2012.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2012–17731 Filed 7–19–12; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Leadership Meeting on Maternal, Fetal, and Infant Opioid Exposure and Neonatal Abstinence Syndrome

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: An ONDCP Leadership Meeting on Maternal, Fetal and Infant Opioid Exposure and Neonatal Abstinence Syndrome (NAS) will bring together leaders in the field of policy, opioid exposed infants, pain treatment during pregnancy, and addiction treatment during and after pregnancy. The meeting will be held on Thursday, August 30th 2012 at the White House Conference Center at 726 Jackson Place, NW., Washington D.C., starting at 9:00 a.m. and concluding at 5:30 p.m. The overall objectives of the meeting are to review the state of science and policy and discuss the remaining challenges to the field concerning the upswing in maternal prescription drug abuse and dependence and resulting increases in opioid exposed babies with NAS and possibly other consequences. Misuse and abuse of, and dependence upon, prescription opioid drugs adversely affect the health of millions of Americans and their families.

The specific conference objectives are: (1) To share research findings concerning the NAS epidemic and its costs; (2) to begin a national discussion concerning promising and best practices for treating opioid exposed babies; (3) to raise awareness about opioid misuse and dependence during pregnancy and the need for women with drug use disorders to access treatment through family medicine and gynecological practitioners, and specialty treatment providers; (4) to discuss legal and policy issues related to opioid using pregnant women and mothers including barriers to accessing treatment; (5) to promote awareness among regulatory agencies and insurers concerning the risks and benefits of opioids to developing fetuses and the likelihood of neonatal abstinence syndrome resulting from long term opioid use during pregnancy; and (6) to raise awareness about risk prevention opportunities among practitioners and regulators. Members of the public who wish to attend the meeting should telephone ONDCP's Maternal, Fetal, and Infant Opioid Exposure and Neonatal Abstinence Syndrome telephone line at (202) 395–7454 to arrange building access.

To Attend or For Further Information Contact: Cecelia Spitznas, Ph.D. at (202) 395–7454 or email *rsvp@ondcp.eop.gov.*

Dated: July 16, 2012.

Linda V. Priebe,

Deputy General Counsel.

[FR Doc. 2012–17679 Filed 7–19–12; 8:45 am]

BILLING CODE 3180–W1–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Directorate for Mathematical and Physical Sciences Advisory Committee (MPSAC). #66.

Date/Time: August 16, 2012 2:00 p.m.–4:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Report of the Portfolio Review subcommittee for the Division of Astronomical Science Report of the NSF Materials 2022 subcommittee for the Division of Materials Research.

Summary Minutes: May be obtained from the contact person listed above.

Dated: July 17, 2012.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2012–17698 Filed 7–19–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423; NRC–2012–0044]

Central Vermont Public Service Corporation, Millstone Power Station, Unit 3; Notice of Consideration of Approval of Transfer of Facility Operating License, Conforming Amendment and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for license transfer and conforming license, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by August 20, 2012. A request for a hearing must be filed by August 9, 2012.

ADDRESSES: Please include Docket ID NRC–2012–0044 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2012–0044. Address questions about NRC dockets to Carol Gallagher 301–492–3668; email *Carol.Gallagher@nrc.gov.*

Mail comments to: 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. You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application dated September 9, 2011, as supplemented by letters dated November 4, 2011, April 6, 2012, May 4, 2012 and June 26, 2012 are available electronically under ADAMS Accession Nos. ML11256A051, ML11311A148, ML12100A017, ML12128A433 and ML12180A123, respectively.

FOR FURTHER INFORMATION CONTACT: James Kim, Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–4125: fax number: 301–415–2102; email: *james.kim@nrc.gov.*

Background

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of control of Central Vermont Public Service Corporation (CVPS)' interest in the Renewed Facility Operating License (No. NPF–49) for the Millstone Power Station, Unit 3 (MPS3) resulting from a subsequent restructuring in which CVPS will be consolidated with Gaz Métro Limited Partnership (Gaz Métro)'s existing U.S. subsidiary Green Mountain Power Corporation (GMP). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. By Order dated June 15, 2012, the Commission approved the indirect transfer of control of CVPS' 1.7303% interest in the license for MPS3 resulting from the acquisition of CVPS by Gaz Métro. The remaining co-owners are Massachusetts Municipal Wholesale Electric Company (4.7990%) and Dominion Nuclear Connecticut, Inc. (93.4707%). Dominion Nuclear Connecticut, Inc. is the licensed operator.

According to an application for approval filed by CVPS in connection with the consolidation of CVPS and GMP, GMP will be the surviving corporation resulting from the merger. GMP will continue to be a minority co-owner and licensee of the facility. This application does not affect Massachusetts Municipal Wholesale Electric Company's ownership or Dominion Nuclear Connecticut, Inc.'s ownership and operation of the facility.

No physical changes to the MPS3 facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Central Vermont Public Service Corporation with Green Mountain Power Corporation, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed acquisition will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility, which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Hearing Request

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-Filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii). NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

hearing.docket@nrc.gov, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this license transfer application, see the application dated September 9, 2011, as supplemented by letters dated November 4, 2011, April 6, 2012, May 4, 2016, and June 26, 2012, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly

available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of July 2012.

For the Nuclear Regulatory Commission.

James Kim,

Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17729 Filed 7–19–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–264; NRC–2012–0026]

License Renewal for the Dow Chemical TRIGA Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; availability.

FOR FURTHER INFORMATION CONTACT: Geoffrey A. Wertz, Project Manager, Research and Test Reactor Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a renewed Facility Operating License No. R–108, to be held by Dow Chemical (Dow, or the licensee), which would authorize continued operation of the Dow Training, Research, Isotope production, General Atomics (TRIGA) Research Reactor, located in Midland County, MI. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact. The renewed license will be issued following the publication of this document.

II. EA Summary

Identification of the Proposed Action: The proposed action would renew Facility Operating License No. R–108 for a period of 20 years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated April 1, 2009, as supplemented on September 24, 2010; January 12, February 11, April 20, May 12, May 27, August 12, August 31, October 12, November 10, and December 6, 2011; and January 13, January 20, February 7, and June 11, 2012. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action: The proposed action is needed to allow the continued operation of the Dow TRIGA Research Reactor to routinely provide opportunities to conduct neutron activation analysis, isotope production, neutron radiography, and irradiation studies for a period of 20 years.

Environmental Impacts of the Proposed Action: The NRC completed its safety evaluation of the proposed action to issue a renewed Facility Operating License No. R–108 to allow continued operation of the Dow TRIGA Research Reactor for an additional 20 years and concluded there is reasonable assurance that the Dow TRIGA Research Reactor will continue to operate safely for the additional period of time. The details of the NRC staff's safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The Dow TRIGA Research Reactor is located on the Michigan Division of the Dow Chemical Company in Midland, MI and is a part of the Analytical Sciences Laboratory. The reactor is housed in a laboratory building constructed of concrete panel, concrete block walls, and steel frame. The reactor site comprises of the reactor building. Adjacent to the site are research buildings to the east and other industrial buildings in the outlying area. The nearest residence is located approximately 480 meters (530 yards) from the site boundary.

The Dow TRIGA Research Reactor is a pool-type, light water moderated and cooled research reactor licensed to operate at a steady-state power level of 300 kilowatt (kW) thermal power. The fuel is located at the bottom of an aluminum lined concrete pool with a volume of approximately 19,000 liters (5,000 gallons) and a depth of 6.5 meters (21.5 feet). The reactor is fueled with standard low-enriched uranium TRIGA fuel. A detailed description of the reactor can be found in the Safety Analysis Report (SAR) for the Dow TRIGA Research Reactor dated April 1, 2009. There were two major modifications to the Facility Operating License No. R–108 since renewal of the license on May 8, 1989. License Amendment No. 6 dated December 13, 1990, approved installation of a microprocessor based instrument and control system. A heat exchanger upgrade was completed in 2005, and a review in accordance with 10 CFR 50.59 was completed by the licensee prior to return to operation.

The licensee has not requested a change to the facility design or operating conditions as part of the renewal request. No changes are being made in the types or quantities of effluents that may be released off site. The licensee has systems in place to control the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. As discussed in the NRC staff's safety evaluation, the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. There would be no increase in routine occupational or public radiation exposure as a result of license renewal. As discussed in the NRC staff's safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents.

Therefore, the NRC staff finds that license renewal would not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last six years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff finds that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on its evaluation, the NRC staff concludes that continued operation of the reactor would not have a significant environmental impact.

A. Radiological Impact

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are discharged by the facility exhaust system via an exhaust vent located 8 feet above ground on the side of the reactor room, at a volumetric flow rate of approximately 48 cubic meters per

minute (1700 cubic feet per minute). A fume hood in the laboratory adjacent to the reactor room used for sample preparation exhausts through a stack on top of the reactor building. Other release pathways do exist; however, they are normally secured during reactor operation and have insignificant volumetric flow rates compared to the facility exhaust system. The only significant nuclide found in the gaseous effluent stream is Argon-41. The licensee performed calculations to estimate the production level of Argon-41 associated with operation of the reactor at high power. The licensee's calculations indicated that annual Argon-41 release would result in an offsite concentration of 9.8E–10 microcuries per milliliter (μCi/ml), which is below the limit of 1.0E-8 μCi/ml specified in 10 CFR Part 20, Appendix B for air effluent releases. The NRC staff reviewed the licensee's calculation and found it to be acceptable. The bounding calculation of total gaseous radioactive releases is less than two percent of the air effluent concentration limits set by 10 CFR Part 20, Appendix B. The potential annual radiation dose to a member of the general public resulting from this concentration is approximately 0.00056 milliSieverts (mSv) (0.056 millirems (mrem)), and this demonstrates compliance with the dose limit of 1 mSv (100 mrem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the air emissions dose constraint of 0.1 mSv (10 mrem) specified in 10 CFR 20.1101(d).

The licensee disposes of liquid radioactive wastes by solidifying liquid waste. The NRC staff's review of Dow TRIGA Research Reactor annual reports covering the last 6 years indicated that the licensee reported no routine releases of liquid radioactive waste by any of the disposal methods.

Solid low-level radioactive waste generated at the Dow TRIGA Research Reactor is disposed under the guidance of the Radiation Safety Committee and the site Radiation Safety Officer using the Dow Radiation Protection Manual. The bulk of the waste consists of samples, sample vials, gloves, and paper towels. The licensee disposes of the waste by decay in storage or shipment to a low level waste broker in accordance with all applicable regulations for transportation of radioactive materials. The licensee stated that no spent nuclear fuel has been shipped from the site to date. To comply with the Nuclear Waste Policy Act of 1982, Dow Chemical Company has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the Dow TRIGA Research Reactor and that DOE is obligated to take the fuel from the site for final disposition.

Chapter K of the Dow TRIGA Research Reactor SAR stated that personnel exposures are well within the limits set by 10 CFR 20.1201, and are as low as is reasonably achievable (ALARA). The Radiation Protection Program tracks personnel exposures, which are usually less than 0.01 mSv (10 mrem) per year. Personnel dosimeters mounted on the interior walls of the reactor room provide a quarterly measurement of total radiation exposures at those locations. These dosimeters typically measure annual doses of less than 0.1 mSv (100 mrem) in the reactor room. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

Based on the NRC staff's review of the past 6 years of data from the Dow TRIGA research reactor annual reports, the NRC staff concluded that operation of the Dow TRIGA Research Reactor does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents

Accident scenarios are discussed in Chapter M of the Dow TRIGA Research Reactor SAR. The maximum hypothetical accident (MHA) is the uncontrolled release of the gaseous fission products contained in the gap between the fuel and the fuel cladding in one fuel element to the reactor building and into the environment. The licensee conservatively calculated doses to facility personnel and the maximum potential dose to a member of the public in the event of the MHA. The NRC staff performed independent calculations to verify that the doses provided by the licensee represented conservative estimates for the MHA. The results are provided in the DTRR License Renewal Safety Evaluation Report. The NRC staff concluded that the maximum doses resulting from this hypothetical accident would be well below the limits in 10 CFR Part 20 of 50 mSv (5000 mrem) for occupational workers, and 1 mSv (100 mrem) for members of the public. The proposed action will not increase the probability or consequences of accidents.

B. Non-Radiological Impacts

The Dow TRIGA Research Reactor core is cooled by a light water primary system consisting of the reactor pool, a heat removal system, and a processing system. Cooling occurs by natural convection, with the heated coolant rising out of the core and into the bulk pool water. The large heat sink provided by the volume of primary coolant allows several hours of full-power operation without any secondary cooling. The heat removal system transfers heat to the secondary system via a 100 kW-heat exchanger and a 1 megawatt (MW) heat exchanger. The secondary system normally uses a 1 MW, closed loop system, through a chiller which discharges the heat directly to atmosphere. The secondary system may be cooled by a 100 kW heat exchanger. The heat is transferred to potable water which is discharged to a sewer system. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system and ultimately the environment.

Based on the information described above, the NRC staff finds that release of thermal effluents from the DOW TRIGA Research Reactor will not have a significant effect on the environment. The licensee complies with the appropriate Michigan Department of Environmental Protection permit for secondary water discharge, and no violations of the permit have occurred. Given that the proposed action does not involve any change in the operation of the reactor, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act (NEPA) Considerations

The NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898 Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

A. Endangered Species Act

Federally- or State-listed protected species have not been found in the immediate vicinity of the Dow TRIGA Research Reactor, and effluents and emissions from the reactor have had no impact on critical habitat. Therefore, no

effects on the aquatic or terrestrial habitat in the vicinity of the Dow TRIGA Research Reactor or to threatened, endangered, or protected species under the Endangered Species Act would be expected. The NRC staff consulted the State of Michigan, Department of Natural Resources and Environment who stated, ''The project should have no impact on rare or unique natural features at the locations specified above if it proceeds according to the plans provided.''

B. Coastal Zone Management Act

The Dow TRIGA Research Reactor is not located within any managed coastal zones, nor would the effluents and emissions from the Dow TRIGA Research Reactor impact any managed coastal zones.

C. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists the closest historic property as the Midland County Courthouse. The Midland County Courthouse is located at 301 West Main Street, Midland, MI, and is approximately 2.1 km (1.3 miles) northwest of the Dow TRIGA Research Reactor. Given the distance between the facility and the Midland County Courthouse, continued operation of the Dow TRIGA Research Reactor will not impact any historical sites. A Section 106 Review was submitted to the State Historic Preservation Office regarding this activity. The State Historic Preservation Office concurred that this activity did not affect historic properties.

D. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any modifications involving impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

E. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the license renewal and the continued operation of the Dow TRIGA Research Reactor. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the Dow TRIGA Research Reactor and all are exposed to the same health and environmental effects generated from activities at the Dow TRIGA Research Reactor.

Minority Populations in the Vicinity of the Dow TRIGA Research Reactor—According to 2010 census data, 7.2 percent of the total population (approximately 5,779 individuals) residing within a 10-mile radius of the Dow TRIGA Research Reactor identified themselves as minority individuals. The largest minority groups were Hispanic or Latino (of any race) (1,848 or 2.3 percent) followed by Asian (1,582 or 2 percent). According to U.S. Census Bureau 2010 estimates, about 7 percent of the Midland County population identified themselves as minorities, with persons of Hispanic or Latino origin (of any race) comprising the largest minority group (2.1 percent), followed by Asian (2.1 percent) and Black or African American (1.4 percent).

Low-income Populations in the Vicinity of the Dow TRIGA Research Reactor—According to 2010 Census data, an average of 10.2 percent of families and 14.5 percent of individuals residing within counties in a 10-mile radius of the reactor (Midland, Bay, and Saginaw Counties), were identified as living below the Federal poverty threshold in 2010. The 2010 Federal poverty threshold was $22,314 for a family of four.

According to American Community Survey census data estimates for 2010, the median household income for Michigan was $45,413, while 12.1 percent of families and 16.8 percent of the state population were determined to be living below the Federal poverty threshold. Midland County had a higher median household income average ($60,543) and a lower percent of families (7.1 percent) and individuals (10.4 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on information described above and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed license renewal would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the Dow TRIGA Research Reactor.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC staff considered denial of the proposed action. If the NRC denied the application for license renewal, facility operations would end and decommissioning would be required. The NRC staff notes that, even with a renewed license, the Dow TRIGA Research Reactor will eventually require decommissioning, at which time the environmental effects of decommissioning will occur. Decommissioning will be conducted in accordance with an NRC-approved decommissioning plan which will require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce radioactive effluents. However, as previously discussed in this environmental assessment, radioactive effluents resulting from facility operations constitute only a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and denial of the application for license renewal are similar. In addition, denial of the application for license renewal would cause the loss of the benefits of teaching, research, and services provided by facility operation.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of License Amendment No. 6 to Facility Operating License No. R–108 for the Dow TRIGA Research Reactor dated December 13, 1990, which amended the Facility Operating License No. R–108 and technical specifications to allow the installation of a microprocessor based instrumentation and control system.

Agencies and Persons Consulted

On February 2, 2102, the NRC provided a draft of this Environmental Assessment to the Resource Management Division of the Michigan Department of Environmental Quality for review. On March 5, 2012, the Resource Management Division of the Michigan Department of Environmental Quality responded by electronic mail agreeing with the conclusions of the draft EA, and otherwise had no comments.

The State of Michigan, Department of Natural Resources and Environment was consulted via its Web site on the proposed activity. On May 7, 2010, the Department of Natural Resources and

Environment concurred that there was no effect on endangered species, and otherwise had no comments.

On December 12, 2010, the NRC staff also provided information regarding the proposed activity to the State Historic Preservation Office for a Section 106 Review. On March 4, 2011, the State Historic Preservation Office concurred that the proposed action has no effect on historic properties.

Finding of No Significant Impact

The NRC staff performed an environmental assessment of the proposed action. The NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined not to prepare an environmental impact statement for the proposed action.

III. Further Information

Documents related to this proposed action, including the application for license renewal and supporting documentation, are available electronically at the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this document are: The application and its supplements, April 1, 2009 (ADAMS Accession No. ML092150443) and September 24, 2010 (ADAMS Accession No. ML102720859); January 12 (ADAMS Accession No. ML110130501), February 11 (ADAMS Accession No. ML110490391), April 20 (ADAMS Accession No. ML113460120), May 12, (ADAMS Accession No. ML11136A229), May 27 (ADAMS Accession No. ML112150327), August 12 (ADAMS Accession Nos. ML11228A116), August 31 (ADAMS Accession No. ML11249A043), October 12 (ADAMS Accession No. ML112930035), November 10 (ADAMS Accession No. ML113410168), and December 6, 2011 (ADAMS Accession No. ML113460038); and January 13 (ADAMS Accession No. ML 12019A007), January 20, (ADAMS Accession No. ML12025A089 and ML12026A152), February 7, 2012 (ADAMS Accession No. ML12040A128), and June 11, 2012 (ADAMS Accession No. ML12164A784). Letters and electronic mail from the State consultations, May 7, 2010 (ADAMS Accession No. ML101340317), March 4, 2011 (ADAMS Accession No. ML110740100), and March 5, 2012 (ADAMS Accession No. ML120730278). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737 or by email to *pdr.@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, Room No. O1 F21 (first floor), One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 10th day of July, 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. 2012–17733 Filed 7–19–12; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Notice of Public Meeting

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Review Commission (Review Commission) invites the public to a meeting on enhancing efficiency in case processing at the Commission level.

Date and Time: August 30, 2012, from 10:30 a.m. until 12:30 p.m.

ADDRESSES: Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457.

FOR FURTHER INFORMATION CONTACT: Melik Ahmir-Abdul, Public Affairs Officer, Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457; Telephone (202) 606–5370; email address: *fedreg@oshrc.gov.*

SUPPLEMENTARY INFORMATION: The Review Commission will be holding a public meeting on August 30, 2012, as part of its ongoing efforts to enhance efficiency and effectiveness in case processing at the Commission level. The Review Commission encourages its stakeholders and other experts in occupational safety and health and administrative law to attend the meeting and provide comment. The specific items on the meeting agenda will be available on the Review Commission's Web site at: *http://www.oshrc.gov.*

To attend the meeting, make an oral statement, or submit a written statement regarding any of the items on the agenda, contact Public Affairs Officer Melik Ahmir-Abdul at the mailing address, phone number, or email address provided above, by Thursday, August 23, 2012. Please indicate whether you want to make an oral statement and what organization you represent (if appropriate). Seating will be available on a first come, first served basis.

The recording of the meeting will be available for public review on the Review Commission's Web site at: *http://www.oshrc.gov.*

Dated: July 17, 2012.

John X. Cerveny,

Deputy Executive Secretary.

[FR Doc. 2012–17716 Filed 7–19–12; 8:45 am]

BILLING CODE 7600–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2012 to April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes annually a consolidated listing of all Schedule A, B and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

The following corrections are submitted for the Excepted Service, Consolidated Listing of Schedules A, B, and C.

11. Department of Homeland Security (Sch. A, 213.3111)

(3) Papago Indian Agency—Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the state of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3112)

Is changed to read as follows:

11. Department of Homeland Security (Sch. A, 213.3111)

(e) Papago Indian Agency—Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the state of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3112)

40. Small Business Administration (Sch. A, 213.3140)

Is changed to read as follows:

32. Small Business Administration (Sch. A, 213.3132)

66. Court Services and Offender Supervision Agency of the District of Columbia

Is changed to read as follows:

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

Schedule B

No changes to report for Schedule B authorities during April 2012.

Schedule C

The following Schedule C appointing authorities were approved during April 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Rural Development.	Special Assistant for Energy Programs.	DA120061	4/19/2012
	Office of the Secretary	Executive Assistant	DA120065	4/19/2012
	Office of Communications	Deputy Director of Scheduling	DA120063	4/24/2012
	Office of the Under Secretary for Food, Nutrition, and Consumer Services.	Advisor for Special Projects	DA120067	4/24/2012
DEPARTMENT OF COMMERCE	Office of Public Affairs	Deputy Director of Public Affairs	DC120101	4/13/2012
	Patent and Trademark Office	Deputy Chief Communications Officer.	DC120106	4/17/2012
DEPARTMENT OF THE NAVY	Office Assistant Secretary of Navy (Energy, Installations, and Environment).	Special Assistant	DN120018	4/12/2012
DEPARTMENT OF EDUCATION	Office of Innovation and Improvement.	Confidential Assistant	DB120062	4/4/2012
	Office for Civil Rights	Confidential Assistant	DB120047	4/13/2012
	Office of the Under Secretary	Confidential Assistant	DB120064	4/19/2012
	Office of Legislation and Congressional Affairs.	Chief of Staff	DB120063	4/20/2012
DEPARTMENT OF ENERGY	Office of General Counsel	Staff Assistant	DE120061	4/3/2012
	Office of Public Affairs	Senior Digital Communications Strategist.	DE120059	4/4/2012
	Office of Public Affairs	Press Assistant	DE120060	4/6/2012
	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE120071	4/19/2012
	Office of the Secretary	Deputy Director for Outreach and Public Engagement.	DE120078	4/26/2012
	Office of the Under Secretary	Special Assistant	DE120075	4/27/2012
	Office of Environmental Management.	Communications Advisor	DE120077	4/27/2012
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	White House Liaison	EP120028	4/13/2012
	Office of the Associate Administrator for External Affairs and Environmental Education.	Assistant Press Secretary	EP120029	4/13/2012
GENERAL SERVICES ADMINISTRATION.	Mid-Atlantic Region	Regional Administrator	GS120017	4/27/2012
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Administration on Aging	Special Assistant	DH120068	4/6/2012
	Centers for Medicare and Medicaid Services.	Senior Advisor	DH120069	4/6/2012
	Office of the Assistant Secretary for Children and Families.	Confidential Assistant-Departmental Liaison for Early Childhood Development.	DH120098	4/13/2012
	Office of the Assistant Secretary for Children and Families.	Confidential Assistant	DH120099	4/13/2012
	Office of the Secretary	Confidential Assistant	DH120100	4/13/2012
	Office of the Assistant Secretary for Children and Families.	Confidential Assistant for Policy, Administration for Children and Families.	DH120101	4/17/2012
	Office of the Assistant Secretary for Public Affairs.	Press Secretary	DH120105	4/23/2012
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DM120114	4/20/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Deputy Assistant Secretary for Public Engagement.	DU120028	4/3/2012
	Office of Congressional and Intergovernmental Relations.	Deputy Assistant Secretary for Intergovernmental Affairs.	DU120029	4/3/2012
DEPARTMENT OF THE INTERIOR	Bureau of Safety and Environmental Enforcement.	Special Assistant	DI120033	4/6/2012
	Office of the Deputy Secretary	Counselor	DI120035	4/19/2012
	Assistant Secretary—Indian Affairs	Senior Advisor- Indian Affairs	DI120044	4/26/2012
DEPARTMENT OF JUSTICE	Office of Justice Programs	Senior Advisor	DJ110052	4/24/2012
DEPARTMENT OF LABOR	Office of the Secretary	Scheduler	DL120048	4/20/2012
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Legislative and Intergovernmental Affairs.	Legislative Affairs Specialist	NN120048	4/6/2012
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Special Assistant	NH120001	4/3/2012
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Confidential Assistant	TS120003	4/27/2012
DEPARTMENT OF STATE	Office of the Special Envoy for Climate Change.	Senior Advisor	DS120065	4/2/2012
	Office of Legislative Affairs	Legislative Management Officer	DS120063	4/4/2012
	Bureau of Conflict and Stabilization Operations.	Director of Overseas Operations	DS120069	4/19/2012
	Bureau of Conflict and Stabilization Operations.	Director of Policy and Programs	DS120068	4/20/2012
	Office of Legislative Affairs	Deputy Assistant Secretary	DS120071	4/20/2012
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Special Assistant	DV120032	4/10/2012

The following Schedule C appointing authorities were revoked during April 2012.

Agency name	Organization name	Position title	Authorization no.	Effective date
DEPARTMENT OF AGRICULTURE	Office of Communications	Deputy Director of Scheduling	DA110108	04/21/12
	Rural Business Service	Special Assistant to the Administrator.	DA100090	04/21/12
DEPARTMENT OF COMMERCE	Office of the Assistant Secretary for Manufacturing and Services.	Special Assistant to the Deputy Assistant Secretary for Services.	DC100079	04/07/12
	International Trade Administration	Director of Advisory Committees	DC090178	04/16/12
	Office of Executive Secretariat	Deputy Director, Executive Secretariat.	DC110066	04/27/12
DEPARTMENT OF EDUCATION	Office for Civil Rights	Confidential Assistant	DB110002	04/07/12
	Office of the Secretary	Confidential Assistant	DB120056	04/07/12
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Legislation.	Confidential Assistant	DH090205	04/07/12
DEPARTMENT OF HOMELAND SECURITY.	Assistant Secretary for Health Affairs and Chief Medical Officer.	Chief of Staff	DM090489	04/07/12
	Office of the Assistant Secretary for Public Affairs.	Press Assistant	DM110026	04/07/12
	Office of the Assistant Secretary for Public Affairs.	Public Affairs Specialist and Strategic Communication Coordinator.	DM120064	04/14/12
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Deputy Assistant Secretary for Intergovernmental Relations.	DU100049	04/07/12
	Office of the Secretary	Special Assistant	DU120022	04/21/12
DEPARTMENT OF JUSTICE	Office of the Legal Counsel	Senior Counsel	DJ110065	04/14/12
DEPARTMENT OF LABOR	Office of the Deputy Secretary	Special Assistant	DL090115	04/13/12
DEPARTMENT OF STATE	Bureau of Public Affairs	Special Assistant	DS100084	04/07/12
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Communications Advisor	DI110094	04/06/12
	Office of the Deputy Secretary	Counselor to the Deputy Secretary	DI100071	04/07/12
	Office of the Deputy Secretary	Special Assistant to the Deputy Secretary.	DI090137	04/21/12
	Secretary's Immediate Office	Deputy Director Office of Communications.	DI100069	04/21/12
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP110047	04/28/12
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	Special Advisor	NN110021	04/07/12
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of the Director	Senior Policy Advisor	QQ090012	04/07/12

Agency name	Organization name	Position title	Authorization no.	Effective date
OFFICE OF THE SECRETARY OF DEFENSE.	Washington Headquarters Services	Defense Fellow	DD090277	04/07/12
	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities).	Special Assistant to the Deputy Assistant Secretary of Defense (Special Operations and Combating Terrorism).	DD090248	04/20/12

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–17751 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from May 1, 2012, to May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes annually a consolidated listing of all Schedule A, B and C appointing authorities current as of June 30 in the **Federal Register**.

Schedule A

No changes to report for Schedule A authorities during May 2012.

Schedule B

No changes to report for Schedule B authorities during May 2012.

Schedule C

The following Schedule C appointing authorities were approved during May 2012.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Assistant Secretary for Administration.	Confidential Assistant	DA120070	05/07/2012
	Foreign Agricultural Service	Senior Advisor	DA120071	05/07/2012
	Food and Nutrition Service	Advisor for Special Projects	DA120078	05/16/2012
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA120080	05/24/2012
		Special Assistant	DA120081	05/24/2012
DEPARTMENT OF COMMERCE	Office of Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.	Associate Director for Oversight	DC120109	05/03/2012
	Minority Business Development Agency.	Special Advisor	DC120116	05/18/2012
	Office of Executive Secretariat	Deputy Director, Executive Secretariat.	DC120119	05/24/2012
DEPARTMENT OF DEFENSE	Office of the Secretary	Special Assistant	DD120067	05/02/2012
DEPARTMENT OF EDUCATION	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Early Learning.	DB120060	05/01/2012
	Office of the Under Secretary	Director of the White House Initiative on American Indian and Alaskan Native Education.	DB120066	05/08/2012
	Office of Communications and Outreach.	Special Assistant	DB120065	05/17/2012
DEPARTMENT OF ENERGY	Office of Assistant Secretary for Policy and International Affairs.	Special Assistant	DE120087	05/09/2012
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant	DE120091	05/21/2012
EXPORT-IMPORT BANK	Board of Directors	Executive Secretary	EB120002	05/08/2012
	Export-Import Bank	Director of Scheduling	EB120003	05/21/2012
DEPARTMENT OF HOMELAND SECURITY.	Privacy Officer	Special Assistant	DM120120	05/08/2012
	Office of the Chief of Staff	Special Assistant	DM120126	05/22/2012
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Congressional and Intergovernmental Relations.	Congressional Relations Officer	DU120036	05/08/2012
	Office of the Secretary	Special Assistant	DU120034	05/09/2012
		Special Assistant	DU120037	05/22/2012
DEPARTMENT OF THE INTERIOR	Assistant Secretary—Fish and Wildlife and Parks.	Special Assistant Fish and Wildlife and Parks.	DI120045	05/03/2012
	Secretary's Immediate Office	Special Assistant	DI120031	05/04/2012

Agency name	Organization name	Position title	Authorization number	Effective date
	Secretary's Immediate Office	Deputy Director of Scheduling	DI120046	05/16/2012
		Deputy Communications Director	DI120048	05/21/2012
	Assistant Secretary—Policy, Management and Budget.	Special Assistant- Policy, Management and Budget.	DI120050	05/22/2012
DEPARTMENT OF JUSTICE	Office of the Associate Attorney General.	Attorney Advisor	DJ120075	05/11/2012
	Civil Division	Counsel and Chief of Staff	DJ120073	05/17/2012
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant	DL120051	05/03/2012
	Office of the Deputy Secretary	Senior Policy Advisor	DL120049	05/04/2012
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Confidential Assistant	BO120026	05/07/2012
SMALL BUSINESS ADMINISTRATION.	Office of Government Contracting and Business Development.	Special Advisor for Government Contracting and Business Development.	SB120022	05/07/2012
DEPARTMENT OF STATE	Office of the Under Secretary for Arms Control and International Security Affairs.	Staff Assistant	DS120073	05/01/2012
	Bureau of Population, Refugees and Migration.	Staff Assistant	DS120075	05/17/2012
	Bureau of Public Affairs	Public Affairs Officer	DS120076	05/18/2012

The following Schedule C appointing authorities were revoked during May 2012.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE	Food and Nutrition Service	Special Assistant	DA090148	05/05/2012
	Office of the Secretary	Deputy White House Liaison	DA110069	05/05/2012
DEPARTMENT OF COMMERCE	National Oceanic and Atmospheric Administration.	Director, Strategic Initiatives and Partnerships.	DC110052	05/12/2012
DEPARTMENT OF EDUCATION	Office of the Secretary	Senior Advisor on Early Learning	DB090149	05/05/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–17758 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–34 and CP2012–42; Order No. 1405]

Product List Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select Contract 5 to the competitive product list. This notice addresses procedural steps associated with these filings.

DATES: *Comments are due:* July 23, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 5 to the competitive product list.[1] The Postal Service asserts that Parcel Select Contract 5 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3).

[1] Request of the United States Postal Service to Add Parcel Select Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 12, 2012 (Request).

Request at 1. The Request has been assigned Docket No. MC2012–34.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–42.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Karen F. Key, Manager, Shipping Products, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Ms. Key contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the later of the following dates: (1) The day after the Commission issues all necessary regulatory approval, or (2) August 1, 2012. *Id.* at 6. The contract will expire July 31, 2015, unless, among other things, either party terminates the agreement upon 3 months' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–34 and CP2012–42 to consider the Request pertaining to the proposed Parcel Select Contract 5 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than July 23, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–34 and CP2012–42 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than July 23, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–17647 Filed 7–19–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–33 and CP2012–41; Order No. 1404]

Product List Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select Contract 4 to the competitive product list. This notice addresses procedural steps associated with these filings.

DATES: *Comments are due:* July 23, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 4 to the competitive product list.[1] The Postal Service asserts that Parcel Select Contract 4 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2012–33.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–41.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Karen F. Key, Manager, Shipping Products, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Ms. Key contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the later of the following dates: (1) The day after the Commission issues all necessary regulatory approval, or (2) August 1, 2012. *Id.* at 6. The contract will expire July 31, 2015, unless, among other things, either party terminates the agreement upon 3 months' written notice to the other party. *Id.* The Postal Service represents that the contract is

[1] Request of the United States Postal Service to Add Parcel Select Contract 4 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 12, 2012 (Request).

consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–33 and CP2012–41 to consider the Request pertaining to the proposed Parcel Select Contract 4 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than July 23, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–33 and CP2012–41 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than July 23, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–17648 Filed 7–19–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective Date:* July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–32, CP2012–40.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–17633 Filed 7–19–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–33, CP2012–41.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–17636 Filed 7–19–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 12, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 5 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–34, CP2012–42.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–17634 Filed 7–19–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67446; File No. SR–Phlx–2012–78]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Regarding Strike Price Intervals in the Short Term Option Program

July 16, 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 July 2, 2012, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item II below, which Item has been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to indicate that the interval between strike prices on STOs [3] shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150; indicate that during the expiration week of a non-STO [4] that is selected for the STO Program, the strike price intervals for the non-STO and the STO shall be the same; and indicate that during the week before the expiration week of the non-STO, the non-STO shall be opened for trading in STO intervals in the same manner as the STO.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to indicate in Rule 1012 and Rule 1101A that the interval between strike prices on STOs shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150 (''STO intervals''). The purpose is also to indicate that during the expiration week of a non-STO that is selected for the STO Program, the strike price intervals for the non-STO and the STO shall be the same; and that during the week before the expiration week of the non-STO, the non-STO shall be opened for trading in STO intervals in the same manner as the STO.

The STO Program is codified in Commentary .11 to Rule 1012 and Rule 1101A(b)(vi).[5] These provisions state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on the Friday of the following business week that is a business day. The Exchange may select up to thirty currently listed option classes on which Short Term Option Series may be opened. In addition to the thirty-option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be opened for trading.[6] Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the short term options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. In respect of the STO Program, the Exchange does not propose any changes to these additional program limitations; the Exchange proposes only to specify that STOs can have interval prices of $0.50 and $1.[7]

The principal reason for the proposed interval pricing structure is market demand for weekly options. There is continuing strong customer demand for having the ability to execute hedging and trading strategies effectively via STOs,[8] particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms.[9] The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred. The STO Program is one of the most popular and quickly-expanding options expiration programs.

In the almost two years since the inception of the STO Program, it has steadily expanded to the point that as of March 20, 2012, STOs represent 5.5% of the total options volume on the Exchange and 9.2% of the total options

[3] Short term options are generally known as ''STOs,'' ''weeklies,'' or ''weekly options.'' STOs are series in an options class that are approved for listing and trading on the Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. *See* Rules 1000(b)(44), 1000A(b)(16), Commentary .11 to Rule 1012 and Rule 1101A(b)(vi).

[4] A non-STO is an option that is in the same option class as the STO but has a longer expiration cycle (e.g. a SLV monthly option as compared to a SLV weekly option).

[5] *See* Securities Exchange Act Release No. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–Phlx–2010–84) (notice of filing and immediate effectiveness permanently establishing STO Program on the Exchange). The STO Program was last expanded in 2011. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–Phlx–2011–131) (order approving expansion of STO Program). Like Phlx, other options exchanges have STO programs. *See* Securities Exchange Act Release Nos. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018) (approval order); 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72) (notice of filing and immediate effectiveness); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness); 62369 (June 23, 2010), 75 FR 37868 (June 30, 2010) (SR–NYSEArca–2010–059) (notice of filing and immediate effectiveness); 62370 (June 23, 2010), 75 FR 37870 (June 30, 2010) (SR–Amex–2010–062) (notice of filing and immediate effectiveness); 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047) (notice of filing and immediate effectiveness); and 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR–BATS–2010–020) (notice of filing and immediate effectiveness).

[6] However, if the Exchange opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). *See* Commentary .11(d) to Rule 1012 and Rule 1101A(b)(vi)(D).

[7] Currently, STOs have the same interval prices as the relevant non-STOs. For example, RUT STOs and RUT non-STOs (that is, monthly expiration RUT options), which are trading at more than $750 per contract, have strike price intervals that are $2.50 or higher. This proposal would not impact any high valuation STO products such as RUT (barring a truly catastrophic market-wide price de-valuation).

[8] In the last STO Program filing, the Exchange noted that it was seeking an expansion in the number of STO classes to greatly minimize the fragmented nature of the STO Program and, like the current proposal, to allow execution of more effective trading and hedging strategies on the Exchange. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–Phlx–2011–131) (order approving expansion of STO Program).

[9] These include, without limitation, options, equities, futures, derivatives, indexes, exchange traded funds (''ETFs''), exchange traded notes (''ETNs''), currencies, and over-the-counter instruments.

volume in the United States.[10] The STO volumes become even more significant when the volumes of an STO class are compared to the volumes of the related non-STO options class. As an example, in the first two months of 2012, on the Exchange there were 3,115,538 contracts of SPY STOs traded and 9,139,908 contracts of SPY monthly options traded; and 650,997 contracts of AAPL STOs traded and 1,584,184 contracts of AAPL monthly options traded. From the 4th quarter of 2010 to the 4th quarter of 2011, STO volume expanded more than 90%,[11] and the Exchange believes that STO volumes will continue to expand in 2012. The Exchange believes that, as such, while STOs are currently one of most popular (high volume) expiration lengths of options traded on Phlx and other options exchanges, the weekly options will only become more popular as market participants continue to gain knowledge about more effective uses of these products for trading and hedging purposes.

Moreover, the Commission has approved the use of $0.50 and $1 strike price intervals on the Exchange as well as in the options industry, particularly at lower price levels (e.g. below $150). Numerous options products are listed (and traded) on the Exchange at $0.50 and $1 strike price intervals. For example, there are two individual ETF options listed on the Exchange at $0.50 strike price intervals.[12] There are approximately 53 options listed on the Exchange at $0.50 strike price intervals pursuant to the $0.50 Strike Program.[13] There are more than 1,000 options listed on the Exchange with $1 strike price intervals: Approximately 272 ETF/ETN options, 7 currency options (FCOs or WCOs), and 812 options pursuant to the $1 Strike Program.[14] Moreover, the Commission has recently approved certain products to trade at $0.50 and $1 strike price intervals on the Chicago Board Options Exchange Incorporated (''CBOE'') within exactly the same strike price points that are proposed by the Exchange in this filing, namely $75 and $150.[15]

The Exchange believes that the benefits of the ability to trade STOs at $0.50 and $1 intervals at lower price levels cannot be underestimated. The proposed intervals would clearly allow traders and investors, and in particular public (retail) investors to more effectively and with greater precision consummate trading and hedging strategies on the Exchange. The Exchange believes that this precision is increasingly necessary, and in fact crucial, as traders and investors engage in trading and hedging strategies across various investment platforms (e.g. equity and ETF, index, derivatives, futures, foreign currency, and even commodities products); particularly when many of these platforms enjoy substantially smaller strike price differentiations (e.g. as low as $.05).[16]

Weekly options have characteristics that are attractive for certain trading and hedging strategies. Thus, weeklies may be attractive for retail trading strategies that could benefit from the inherent accelerated time decay of weekly options, such as selling (buying) vertical or calendar spreads. And weeklies may be particularly attractive instruments for short-term institutional hedging needs (e.g. sudden price movements against large option positions during expiration week; maintenance or adjustment of complex option positions) as well as for retail hedging needs (e.g. preceding large earnings plays). In every case, trading and hedging is more effective when it can be closely tailored.

The current wider STO price intervals have negatively impacted investors and traders, particularly retail public customers, who have on several occasions requested the Exchange for finer, narrower STO intervals. The proposal would fix this.

Following are examples of how inadequately narrow STO intervals negatively impact trading and hedging opportunities.

If an investor needs to purchase an STO call option in CSCO (03/26/12 closing price $20.84), the current $1 strike interval would offer less opportunity and choice for an investor seeking to keep cash expenditures low. For example, an investor wishing to buy an in-the-money call option for less than a $2.50 investment per call purchase has only two strike prices that meet his criteria from which to choose: The 19 strike and the 20 strike. Such call options with five days until expiration might offer ''ask prices'' (option premiums) of $1.75 and $.75. However, if CSCO had $0.50 strike prices as proposed, the same investor would have a selection of March 18.50, 19.00, 19.50, 20.00, and the 20.50 strike call options that may have options premiums from approximately $2.25 down to approximately $.25. This expanded range of strikes, and commensurate option premiums, offers far more choice and a considerably lower cost of entry to the investor, thereby garnering the investor more than a 66% options premium savings. Lower intervals increase effective liquidity by offering investors and traders more price points at which they may execute trading and hedging strategies.[17] This allows investors and traders the ability to more effectively execute their strategies at lower cost. Clearly, more efficient pricing is advantageous to all market participants, from retail to institutional investors.

If, on the put side, an investor is interested in purchasing an STO option in LNKD (03/26/12 closing price $101.38), the current strike interval rules similarly offer less opportunity and less choice for the investor seeking to keep cash expenditures low. For example, an investor wishing to buy an in-the-money put option for less than a $5.00 investment per put purchase has only one strike price that meets his criteria from which to choose: The 105 strike. This put option with five days until expiration may have an option premium of $5.00. However, if LNKD had $1 strike intervals as proposed, the investor would have a selection of March 105, 104, 103, 102, and 101 strike

[10] The Exchange notes that, in fact, the volume increase in STOs since their inception less than two years ago greatly exceeds the volume increase of any other length option (e.g. monthly, quarterly, or long term) over the same equivalent time period.

[11] During the same time period, monthly options volume decreased by 8%.

[12] *See* Securities Exchange Act Release No. 66285 (February 1, 2012), 77 FR 6160 (February 7, 2012) (SR–Phlx–2011–175) (order granting approval of $0.50 strike price intervals for SLV and USO options).

[13] The Exchange notes, however, that the $0.50 Strike Program has inherent price limitations that make it unsuitable for STO options.

[14] Like the $0.50 Strike Program, the $1 Strike Program has inherent limitations that make it unsuitable for STO options. The Exchange is not aware of any material market surveillance issues arising because of the $0.50 or $1 strike price intervals.

[15] *See* Securities Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011) (SR–CBOE–2011–008) (order granting approval of $0.50 and $1 strike price intervals for certain volatility options where the strike prices are less than $75 and between $75 and $150, respectively). In approving the CBOE interval proposal, the Commission stated that the proposal appears to strike a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes and market fragmentation. The Exchange notes that other options exchanges including NYSE Amex, NYSE Arca, ISE, NOM, and Phlx have made similar rule changes. *See* Phlx Commentary .12 to Rule 1012.

[16] As an example, per the CME Web site, strike prices for options on futures may be at an interval of $.05, $.10, and $.25 per specified parameters. *See http://www.cmegroup.com/trading/equity-index/files/EQUITY_FLEX_Options.pdf* (options on S&P 500 and NASDAQ–100 contracts) and *http://www.cmegroup.com/rulebook/files/S_5734_x11-05-18x_Change_in_Listing_Rules_for_Goldx_Silverx_Copper_Options.pdf* (options on metals contracts).

[17] Moreover, lower strike intervals provide additional price points for liquidity providers. This allows the liquidity providers to improve theoretical pricing as well as hedging capabilities, thereby enabling them to increase the size and quality of their markets.

put options that may have options premiums from approximately $5 down to $2. This greatly expanded range of strikes allows the investor more choice and lower cost of entry, and may save the investor as much as 60% in options premium payout.[18]

And as yet another example, if an investor is interested in purchasing a complex option spread, narrow strike intervals would offer additional cost savings and choice. With the 105 LNKD puts trading at $5.00, as stated in the example above, the next strike available to offset the cost of the 105 strike would be the 100 puts trading at an approximately $1.50 premium. With the current intervals, this would result in a 105–100 put spread costing approximately $3.50. However, if strike prices were available in $1 increments, various cheaper spreads could be obtained within the same 105–100 range of strikes. In that each $1 incremented put spread might trade at approximately $.30 to $.80 within this strike range, it is easy to see that $1 strikes as proposed may result in significant savings for investors trying to execute complex strategies.

Furthermore, the inadequate price intervals for STOs, particularly at the lower price levels proposed by the Exchange, may discourage retail and other customers from executing STO orders when they could be the most advantageous for effective execution of trading and hedging strategies on regulated and transparent exchanges. The Exchange feels that it is essential that such negative, potentially costly and time-consuming impacts on retail investors are eliminated by offering tighter intervals within the STO Program. The changes proposed by the Exchange should allow execution of more trading and hedging strategies on the Exchange.[19]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading in the Program at $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150. The Exchange believes that its members will not have a capacity issue as a result of this proposal.

The Exchange also proposes language designed to enable a non-STO option class (*e.g.* monthly option) that is selected for the STO to behave like the STO during the expiration week of the related non-STO.[20]

Specifically, the Exchange proposes that notwithstanding any other provision regarding strike prices in the applicable rule (Rule 1012 for non-index options or Rule 1101A for index options), during the expiration week of a non-STO that is selected for an STO, the strike price intervals for the non-STO shall be the same as the strike price intervals permitted for the STO. Thus, during the non-STO expiration week, the strike price intervals for the non-STO shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150. The Exchange also proposes that notwithstanding any other provision regarding strike prices in the applicable rule (Rule 1012 or Rule 1101A), during the week before the expiration week of a non-STO that is selected for an STO, the Exchange shall open the non-STO for trading in $0.50 and $1 strike price intervals in the same manner as permitted for STOs. Thus, a non-STO may be opened in STO intervals on a Thursday or Friday that is a business day before the STO expiration week.[21] If the Exchange is not open for business on the respective Thursday or Friday, however, the non-STO may be opened in STO intervals on the first business day immediately prior to that respective Thursday or Friday.[22]

These changes are proposed to ensure conformity between STOs and non-STOs that are in the same options class (e.g. weekly SLV options and monthly SLV options). The Exchange believes that, as discussed, these changes are necessary to give investors and traders the ability to maximize trading and hedging opportunities while minimizing costs; and that a lack of such conforming changes would be counter-productive for market participants.

The Exchange believes that the STO Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Furthermore, the Exchange has had to reject trading requests because of the limitations imposed by the Program. For these reasons, the Exchange requests an expansion of the strike price intervals in the Program, as well as conformity of the relevant non-STO process, to provide investors with better weekly option choices for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5) of the Act[24] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. This will be effectuated by the following rule changes: STO strike price intervals of $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150; during the expiration week of the non-STO, the strike price intervals for the non-STO will be the same as for the STO; and during the week before the non-STO expiration week, the timing for opening the non-STO in STO strike price intervals will be the same as for the STO. The Exchange believes that the proposed changes will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions, while ensuring conformity between STOs and related non-STOs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not

[18] This premium savings may be very significant for an investor that is buying a large number of option contracts. *See* supra note 17 and related text.

[19] In addition, there is a competitive impact. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategies (*e.g.* complex option spreads) wholly on their preferred market, namely the Exchange. Second, the proposal would diminish the potential for foregone market opportunities on the Exchange caused by the need to use a more advantageous (that is, interval-precise) platform than STOs currently allow.

[20] The Exchange notes that STOs are not listed and traded during the expiration week of the related non-STOs, which is generally the third week in the month. During this week, those that want or need weekly options must buy (sell) the related non-STOs. The proposal would allow traders and hedgers to have the same benefits during each week in a month, including the one week when STOs are not listed and traded.

[21] The proposed opening timing is consistent with the principle that the Exchange may add a new series of options until five business days prior to expiration. *See* Rule 1012 and Rule 1101A.

[22] The STO opening process is set forth in Commentary 11 to Rule 1012 and Rule 1101A(b)(vi):

After an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options in that class that expire on the Friday of the following business week that is a business day (''Short Term Option Expiration Date''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategies wholly on their preferred market, namely the Exchange. And second, the proposal would diminish the potential for foregone market opportunities on the Exchange caused by the need to use a more advantageous (that is, interval-precise) platform than STOs currently allow.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission specifically requests comment on the following:

• As outlined in detail above in Item II.A.1, Phlx has proposed that the interval between strike prices on STOs shall be $0.50 or greater where the strike price is less than $75 and $1 or greater where the strike price is between $75 and $150. The International Securities Exchange, LLC (''ISE'') has proposed a similar rule change to its short term option series program (the ''ISE STOS Program'') that would allow trading at $0.50 strike price intervals for option classes that trade in $1 increments and are in the ISE STOS Program.[25] Do commenters have any views regarding implementation of both the ISE Proposal and the instant proposal, if approved, that the Commission should take into consideration? If so, please provide detail.

• Both Phlx and ISE included within their respective filings a discussion of the anticipated impact of its proposal on capacity and liquidity.[26] Do commenters have views on whether, and if so how, implementation of both the ISE Proposal and the instant proposal, if approved, would impact liquidity or capacity that the Commission should take into consideration? If so, please provide detail.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–78 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–78 and should be submitted on or before August 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17713 Filed 7–19–12; 8:45 am]

BILLING CODE 8011–01–P

[25] *See* Securities Release No. 67083 (May 31, 2012), 77 FR 33543 (June 6, 2012) (SR–ISE–2012–33) (the ''ISE Proposal'').

[26] *See* ISE Proposal, *id.,* at 33545; *supra,* pp. 8, 10.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67443; File No. SR–OCC–2012–11]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Auction Process Under Options Clearing Corporation Rule 1104

July 16, 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 July 3, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Among other things, the proposed rule change would add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In a recent rule change, OCC proposed and the Commission approved provisions to OCC Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate such positions and collateral through a private auction process.[3] The purpose of the current proposed rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts. The proposed interpretation would set forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation .02 to Rule 1104 would be added following Rules 1106, 1107, 2210, and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a ''sealed bid'' auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction. Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances.[4] For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial Code, the proposed interpretations would require Clearing Members to acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member's accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

OCC believes that the proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Act, because they are designed to assure the safeguarding of securities and funds which are in the custody or control of OCC by providing appropriate procedures for the auctioning of positions and collateral of a suspended clearing member. The changes are intended to facilitate the performance of OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions and the protection of securities investors and the public interest. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] *See* Exchange Act Release No. 65654 (October 28, 2011), 76 FR 68236 (November 3, 2011) (SR–OCC–2011–08) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member's Accounts).

[4] The Staff notes for clarity that OCC has no specific procedures to announce auctions or their results other than notices to the winning bidders and losing bidders as specified in proposed Rule 1104(e).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2012–11 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2012–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_11.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–11 and should be submitted on or before August 10, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17664 Filed 7–19–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67444; File No. SR–NYSEMKT–2012–20]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 134—Equities To Shorten the Time Frame for Assigning the Contra Party to Unresolved Account Balances in the Exchange's Online Comparison System

July 16, 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 July 5, 2012, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 134—Equities to shorten the time frame for assigning the contra party to unresolved account balances in the Exchange's Online Comparison System. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 134(e)(iii)—Equities (Differences and Omissions-Cleared Transactions) to shorten the time frame for assigning a designated market maker (''DMM'') unit as the contra party for any unresolved omnibus account balances in the Exchange's Online Comparison System (''OCS'').

Background

The Exchange operates its OCS to assist in trade settlement. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing and questioned trade (''QT'') resolution for trades that take place on the Exchange. The OCS system is used by Exchange members and member organizations in their roles as clearing firms, brokers and DMM units for Exchange trade executions. OCS is linked internally to Exchange trading systems and externally to The National Securities Clearing Corporation.[3]

To facilitate the comparison process, the Exchange utilizes omnibus account designations to record trade data.[4] Using omnibus account designations allows for universal contras for one trade side, reducing the number of different data elements that have to be independently recorded into a broker's hand-held device or written on a Floor report for a trade.

In May 2009, the Exchange amended Rule 134—Equities to enable it to assign, on the second business day after the trade date (''T+2''), any open balance in any of the omnibus accounts it uses to compare trades to either a DMM Unit or the member organization that has been identified as the clearing firm for one side of an unresolved trade.[5] Specifically, the Exchange added new subsection (e)(iii) to Rule 134—

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] National Securities Clearing Corporation (''NSCC'') is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934. NSCC provides centralized clearance and settlement services for equity security trades for U.S. broker-dealers.

[4] An ''omnibus account'' is an account in which the transactions of multiple individual participants are combined.

[5] *See* Securities Exchange Act Release No. 59997 (May 28, 2009), 74 FR 28086 (June 12, 2009) (SR–NYSEAmex–2009–20).

Equities to enable the Exchange to assign a Floor broker's clearing firm or DMM Unit, at the close of business on T+2, as the contra side to an imbalance in any omnibus account that is used by OCS. In June 2010, the Exchange amended Rule 134—Equities again to separate Rule 134(e)(iii)—Equities into two subsections and clarify that DMM units are assigned as the contra party to an omnibus account imbalance and that clearing firms are the assigned contra party to an uncompared trade. The Exchange also shortened the time frame for the assignment of uncompared e-Quote transactions from T+2 to the first business day after the trade date (''T+1'').[6]

Proposed Amendment of NYSE Rule 134

The Exchange proposes to amend Rule 134(e)(iii)—Equities to shorten the time frame for when the DMM unit is assigned as the contra party to an unresolved omnibus account imbalance. The current rule provides that at the close of business on T+2 after the conclusion of the processes described in sections (e)(i) and (e)(ii) of the Rule, but no earlier than 7:00 p.m., the Exchange shall assign a DMM unit as the contra party to any unresolved omnibus account imbalance remaining in OCS.

The Exchange proposes to amend Rule 134(e)(iii)—Equities to provide that a DMM unit would be assigned as the contra party to any unresolved omnibus account imbalances by the close of business on the trade date, but no earlier than 5:00 p.m. The Exchange believes that shortening this time period will result in speedier resolution of unresolved account balances. The Exchange will be able to implement the proposed change due to system developments in OCS, including the reduction in the use of omnibus accounts other than for manual executions and related ability for the DMM to identify post-trade the clearing member organization behind a manual execution. The Exchange notes that the proposed changes to Rule 134(e)(iii)—Equities will not impact the processes set forth in (e)(i) and (ii) of that Rule.

Because this is a technology-based change, the Exchange proposes to announce the implementation date by Trader Update.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this rule proposal accomplishes these goals by enhancing the comparison process at the Exchange thereby supporting the timely settlement of securities transactions. In particular, the Exchange believes that the speedier resolution of unresolved account balances support the mechanism of a free and open market as it assures that the contra party to a transaction will receive a cleared transaction in a timely and efficient manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–20 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NYSE and on NYSE's Web site at *www.nyse.com.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–20 and should be submitted on or before August 10, 2012.

[6] *See* Securities Exchange Act Release No. 64277 (July 9, 2010), 75 FR 41560 (July 16, 2010) (SR–NYSE–2010–48 and SR–NYSEAmex–2010–61).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17665 Filed 7–19–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67445; File No. SR–NYSE–2012–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 134 To Shorten the Time Frame for Assigning the Contra Party to Unresolved Account Balances in the Exchange's Online Comparison System

July 16, 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 July 5, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 134 to shorten the time frame for assigning the contra party to unresolved account balances in the Exchange's Online Comparison System. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 134(e)(iii) (Differences and Omissions-Cleared Transactions) to shorten the time frame for assigning a designated market maker (''DMM'') unit as the contra party for any unresolved omnibus account balances in the Exchange's Online Comparison System (''OCS'').

Background

The Exchange operates its OCS to assist in trade settlement. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing and questioned trade (''QT'') resolution for trades that take place on the Exchange. The OCS system is used by Exchange members and member organizations in their roles as clearing firms, brokers and DMM units for Exchange trade executions. OCS is linked internally to NYSE trading systems and externally to The National Securities Clearing Corporation.[3]

To facilitate the comparison process, the Exchange utilizes omnibus account designations to record trade data.[4] Using omnibus account designations allows for universal contras for one trade side, reducing the number of different data elements that have to be independently recorded into a broker's hand-held device or written on a Floor report for a trade.

In May 2009, the Exchange amended Rule 134 to enable it to assign, on the second business day after the trade date (''T+2''), any open balance in any of the omnibus accounts it uses to compare trades to either a DMM Unit or the member organization that has been identified as the clearing firm for one side of an unresolved trade.[5] Specifically, the Exchange added new subsection (e)(iii) to Rule 134 to enable the Exchange to assign a Floor broker's clearing firm or DMM Unit, at the close of business on T+2, as the contra side to an imbalance in any omnibus account that is used by OCS. In June 2010, the Exchange amended Rule 134 again to separate Rule 134(e)(iii) into two subsections and clarify that DMM units are assigned as the contra party to an omnibus account imbalance and that clearing firms are the assigned contra party to an uncompared trade. The Exchange also shortened the time frame for the assignment of uncompared e-Quote transactions from T+2 to the first business day after the trade date (''T+1'').[6]

Proposed Amendment of NYSE Rule 134

The Exchange proposes to amend Rule 134(e)(iii) to shorten the time frame for when the DMM unit is assigned as the contra party to an unresolved omnibus account imbalance. The current rule provides that at the close of business on T+2 after the conclusion of the processes described in sections (e)(i) and (e)(ii) of the Rule, but no earlier than 7:00 p.m., the Exchange shall assign a DMM unit as the contra party to any unresolved omnibus account imbalance remaining in OCS.

The Exchange proposes to amend Rule 134(e)(iii) to provide that a DMM unit would be assigned as the contra party to any unresolved omnibus account imbalances by the close of business on the trade date, but no earlier than 5:00 p.m. The Exchange believes that shortening this time period will result in speedier resolution of unresolved account balances. The Exchange will be able to implement the proposed change due to system developments in OCS, including the reduction in the use of omnibus accounts other than for manual executions and related ability for the DMM to identify post-trade the clearing member organization behind a manual execution. The Exchange notes that the proposed changes to Rule 134(e)(iii) will not impact the processes set forth in Rule 134(e)(i) and (ii).

Because this is a technology-based change, the Exchange proposes to announce the implementation date by Trader Update.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] National Securities Clearing Corporation (''NSCC'') is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934. NSCC provides centralized clearance and settlement services for equity security trades for U.S. broker-dealers.

[4] An ''omnibus account'' is an account in which the transactions of multiple individual participants are combined.

[5] *See* Securities Exchange Act Release No. 59997 (May 28, 2009), 74 FR 28086 (June 12, 2009) (SR–NYSE–2009–50).

[6] *See* Securities Exchange Act Release No. 64277 (July 9, 2010), 75 FR 41560 (July 16, 2010) (SR–NYSE–2010–48 and SR–NYSEAmex–2010–61).

[7] 15 U.S.C. 78f(b)(5).

have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this rule proposal accomplishes these goals by enhancing the comparison process at the Exchange thereby supporting the timely settlement of securities transactions. In particular, the Exchange believes that the speedier resolution of unresolved account balances support the mechanism of a free and open market as it assures that the contra party to a transaction will receive a cleared transaction in a timely and efficient manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–25 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NYSE and on NYSE's Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–25 and should be submitted on or before August 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17666 Filed 7–19–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67447; File No. SR–ISE–2012–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Regarding Strike Price Intervals for Certain Option Classes

July 16, 2012.

On May 21, 2012, the International Securities Exchange, LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Short Term Option Series Program (''STOS Program''). The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.[3] The Commission received one comment letter on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 21, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would modify the strike price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67083 (May 31, 2012), 77 FR 33543.

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Jenny L. Klebes, Senior Attorney, Legal Division, Chicago Board Options Exchange, Incorporated, dated June 27, 2012.

[5] 15 U.S.C. 78s(b)(2).

intervals for certain option classes that are in the STOS Program; the comment letter that has been submitted in connection with this proposed rule change; and any response to the comment letter submitted by the Exchange. In addition, another exchange has recently submitted a similar, but not identical, proposal to modify the strike price intervals of its short terms option series program,[6] and the Commission is seeking comment about the potential implementation of both the Phlx Proposal and the instant proposal, including whether implementation of both proposals would impact liquidity or capacity.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates September 4, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2012–33).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17714 Filed 7–19–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7858]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Last Days of Pompeii: Decadence, Apocalypse, Resurrection''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''The Last Days of Pompeii: Decadence, Apocalypse, Resurrection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Malibu, California, from on or about September 12, 2012, until on or about January 7, 2013, the Cleveland Museum of Art, Cleveland, Ohio, from on or about February 24, 2013, until on or about May 19, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 13, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–17723 Filed 7–19–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of Funding Availability.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for business centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, or chambers of commerce registered with the Internal Revenue Service as 501C(6) or 501C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Mid-Atlantic Region.

OSDBU will enter into a Cooperative Agreement with an organization to provide outreach to the small business community in a designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2012–11.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to small and disadvantaged businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $183,000.

Award Floor: $140,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before September 3, 2012, 5:00 p.m. Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before September 17, 2012.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Ms. Patricia Martin, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56–462, Washington, DC, 20590. Telephone: 1–800–532–1169. Email: *patricia.martin@dot.gov.*

[6] *See* Securities Exchange Act Release No. 67446 (July 16, 2012) (SR–Phlx–2012–78) (the ''Phlx Proposal'').

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

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1. Introduction

1.1 Background

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Partnerships Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e., The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), Procurement Technical Assistance Centers (PTACs)), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls Entrepreneurial Training and Technical Assistance Internship Program (WGP), and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the designated geographical area ''Washington DC'' from herein referred to as ''region'', competed in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for the region must contain a plan to service the entire region, not just the SBTRC state or local geographical area. The region's SBTRC headquarters must be established in the designated state set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation:

Mid-Atlantic Region: Washington DC, Maryland, Pennsylvania, Ohio, Delaware.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Mid-Atlantic Region.	Ceiling: $183,000 per year. Floor: $140,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator's salary

plus fringe benefit, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332 (b) (4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts. In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a monthly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's National Information Clearinghouse in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the Central Contractor Registration (CCR) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a Web-based system for posting solicitations and other Federal procurement-related documents on the

Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

(F) Short Term Lending Program

1. Work with STLP participating banks and if not available, other lending institutions, to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 5 approved STLP applications per year.

(G) Bonding Education Program

1. Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver the Bonding Education Program (BEP). The BEP consists of the following components; (1) the stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP.

2. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

(H) Furnish all labor, facilities and equipment to perform the services described in this announcement.

(I) Women and Girls Internship Program

1. Pursuant to Executive Order 13506, and 49 U.S.C. 332(b)(4) & (7), the SBTRC shall administer the Women & Girls Internship Program in their geographical region. The SBTRC shall design and establish an internship program within the overall parameters of the program defined by USDOT/OSDBU. The program must be designed to engage female students from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the internship program to all colleges and universities and transportation entities in their region. Internships shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing internships with transportation-related WOBs. The SBTRC shall also develop a student mentorship program in conjunction with the internship program.

The student interns and the SBTRC shall follow the participating institution's required policies and procedures to submit and acquire academic credit for students participating in the internship program. In the event academic credit is not awarded to the student intern by the participating institution, the SBTRC may provide a stipend to the student from the amount awarded for stipends under a separate amendment to the Cooperative Agreement, to students placed in US DOT, the public sector and S/WOBs/DBEs. Stipends may also be provided in cases of financial hardship. All stipends must be pre-approved by the USDOT/OSDBU Budget Analyst. The stipend may be paid at the rate negotiated by the SBTRC and the USDOT/OSDBU Program Manager.

In advance of student selection, the SBTRC shall submit to the Program Analyst the criteria developed to select student interns; describe an individual student formative goal; estimate student participation, provisions for academic credit, the duration of the internships in weeks, the names of the collaborating transportation-related public or private entity, the names of contact persons and their related contact information. In the event a stipend is requested, the SBTRC shall also submit to the Program Analyst the amount of the stipend requested and the basis of the request. Criteria for selecting interns may include, but is not limited to, vocational interest in transportation-related careers, academic success, work experience and recommendations from professors.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation-related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per region for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments.

All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Grant application packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.* The applicant is advised to turn on request delivery receipt notification for email submissions.

Proposals must be received by DOT/OSDBU no later than September 3, 2012, 5:00 p.m., EST.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region.

Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. OSDBU will place an emphasis on capabilities of the applicant's financial management staff.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets

the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which may include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

APPENDIX A

FORMAT FOR PROPOSALS FOR THE DEPARTMENT OF TRANSPORTATION OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION'S SMALL BUSINESS TRANSPORTATION RESOURCE CENTER (SBTRC) PROGRAM

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. TABLE OF CONTENTS

Identify all parts, sections and attachments of the application.

2. APPLICATION SUMMARY

Provide a *summary overview* of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. UNDERSTANDING OF THE WORK

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. APPROACH AND STRATEGY

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. LINKAGES

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. ORGANIZATIONAL CAPABILITY

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. STAFF CAPABILITY AND EXPERIENCE

- List proposed key personnel, their salaries and proposed fringe benefit factors.
- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. COST PROPOSAL

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

9. PROOF OF TAX EXEMPT STATUS

10. ASSURANCES SIGNATURE FORM

Complete Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS identified as Attachment 1. SF424B may be downloaded from *http://www.grants.gov/techlib/SF424B-V1.1.pdf.*

11. CERTIFICATION SIGNATURE FORMS

Complete form DOTF2307–1 DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL and Form DOTF2308–1 CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS identified as Attachment 2. The forms may be downloaded from *http://www.osdbu.dot.gov/financial/docs/CertDrug-FreeDOTF2307-1.pdf* and *http://www.osdbu.dot.gov/financial/docs/CertLobbying DOTF2308-1.pdf.*

12. SIGNED CONFLICT OF INTEREST STATEMENTS

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

13. STANDARD FORM 424

Complete Standard Form 424 Application for Federal Assistance identified as Attachment 3. SF424 can be downloaded from *http://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf.*

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC on July 12, 2012.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2012–17767 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2012–0101]

Privacy Act of 1974; System of Records; Statement of General Routine Uses; Notice of Establishment of Three New General Routine Uses

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice to establish three new Privacy Act general routine uses.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Transportation's Office of the Secretary of Transportation (DOT/OST) is publishing three new general routine uses for all DOT systems of records. Comment is invited on the three new routine uses. The three new routine uses are needed to clarify: The Department's authority to make disclosures to any person or entity acting on behalf of DOT when the disclosure is necessary to accomplish a DOT function; that the Department may make disclosures to audit or oversight organizations when necessary and relevant to a particular audit or oversight investigation of DOT programs or activities; and that the Department may make disclosures to other governmental entities when necessary for the detection, prevention, disruption, preemption, or mitigation of terrorist activities against the United States, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

DATES: Effective August 14, 2012. Written comments should be submitted on or before the effective date. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: You may submit comments, identified by Docket Number DOT–OST–2012–0101, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251
- Mail: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590 or *privacy@dot.gov* or (202) 527–3284.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the United States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register**, for public notice and comment, a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system and the routine uses for which the agency discloses such information outside the agency. As provided in ''Privacy Act Guidelines'' issued by the Office of Management and Budget (OMB) on July 1, 1975 (see 40 FR 28966), once an agency has published a routine use that will apply to all of its systems of records (i.e., a general routine use) in the **Federal Register** for public notice and comment, the agency may thereafter incorporate the publication by reference in each system's SORN without inviting further public comment on that use. To date, DOT has published 12 general routine uses (*see* 65 FR 19476, published April 11, 2000; 68 FR 8647, published February 23, 2003; and 75 FR 82132, published December 29, 2010).

The three new general routine uses are compatible with the purposes for which the information to be disclosed under these general routine uses was originally collected. With respect to the first new general routine use, individuals whose PII is in DOT systems expect that DOT may engage contractors, experts, consultants, and others to assist it in performing the functions and activities that gave rise to the system of records. This general use does not contemplate uses that are in addition to those already identified in existing DOT SORNs, instead, it clarifies that DOT may disclose information to its contractors, consultants, experts and others when those individuals or organizations are engaged in those uses already described in DOT SORNs on DOT's behalf. With respect to the second new general routine use, individuals whose PII is in DOT systems expect that their information may be disclosed to audit or oversight agencies, like the National Transportation Safety Board, when and only to the extent necessary and relevant to the audit or oversight of DOT activities. Finally, with respect to the third new general routine use, individuals whose information is in DOT systems expect that certain information may be released as is necessary and relevant to detect, prevent, disrupt, or mitigate terrorist activities against the United States.

For the reasons set forth above, the following three general routine uses are established:

13. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

14. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

15. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational

agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

Dated: July 16, 2012.

Claire W. Barrett,

DOT Chief Privacy Officer.

[FR Doc. 2012–17697 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0102]

Privacy Act of 1974; Department of Transportation Office of the Secretary—DOT/OST–100 Investigative Record System

AGENCY: Office of the DOT Chief Information Office, Office of the Secretary, DOT.

ACTION: Notice of revised Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation proposes to update and reissue a current Department of Transportation system of records titled, DOT/OST 100 Investigative Record System. This system of records will allow the Department of Transportation Office of the Inspector General to collect and maintain records on individuals who may be complainants, subjects, witnesses, and others who may be identified during the course of an investigation. The records and information collected and maintained in this system are used to document the processing of allegations of violations of criminal, civil, and administrative laws and regulations relating to DOT programs, operations, and employees, as well as contractors and other individuals and entities associated with DOT.

As a result of biennial review of the system, this system of records notice has been updated within the system name, system location, categories of individuals and records in the system, authority for maintenance of the system, purposes, routine uses, as well as storage, retrievability, safeguards, retention and disposal, system manager and address, notification procedure, and record source categories. There will be no change to the Privacy Act exemptions in place for this system of records. However, the system of records notice as published in 2000 omitted certain exemptions contained in DOT's Privacy Act regulations. The revised system of records notice will correct this error. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated and revised system will be included in the Department of Transportation's inventory of record systems.

DATES: Effective August 18, 2012. Written comments should be submitted on or before the effective date. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: You may submit comments, identified by Docket Number DOT–OST–2012–0102, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2012–0102.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Seth B. Kaufman, Department of Transportation, Office of Inspector General, Seventh Floor, J–3, 1200 New Jersey Ave. SE., Washington, DC 20590; or by facsimile (202) 366–1975. For privacy issues please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or (202) 527–3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT) Office of the Secretary proposes to update and reissue a previously published DOT system of records titled DOT/OST 100 Investigative Record System. This system of records will allow the Department of Transportation Office of the Inspector General to collect and maintain records on individuals who may be complainants, subjects, witnesses, and others who may be identified during the course of an investigation. As noted above, the primary intent of the revision is to add routine uses to this system. We also seek to update and clarify other parts of the system of records notice (SORN) in part to reflect changes to the OIG organization and programs since its last publication in 2000.

The DOT Inspector General is responsible for conducting and supervising independent and objective audits, inspections, and investigations of the programs and operations of DOT. OIG promotes economy, efficiency, and effectiveness within the Department and prevents and detects fraud, waste, and abuse in its programs and operations. OIG's Office of Investigations investigates allegations of criminal, civil, and administrative misconduct involving DOT employees, contractors, grantees, and Departmental programs and activities. This includes investigating for violations of criminal laws by entities regulated by DOT, regardless of whether they receive Federal funds. These investigations can result in criminal prosecutions, fines, civil monetary penalties, and administrative sanctions.

The DOT/OST 100 Investigative Record System, system of records assists the OIG with receiving and processing allegations of violation of criminal, civil, and administrative laws and regulations relating to DOT employees, contractors, grantees, regulated persons, and other individuals and entities associated with DOT. The system includes both paper investigative files and OIG's electronic case management and tracking information system which also generates reports. The case management system allows OIG to manage information provided during the course of its investigations, and, in

the process, to facilitate its management of investigations and investigative resources. Through this system, OIG can create a record showing disposition of allegations; track actions taken by management regarding misconduct; track legal actions taken following referrals to the U.S. Department of Justice for prosecution or civil action; provide a system for creating and reporting statistical information; and track government property and other resources used in investigative activities.

This SORN makes several changes to the existing system of records. It amends the system name, system locations, purposes, routine uses, as well as storage, retrievability, safeguards, retention and disposal, system manager and address, notification procedure, and record source categories.

OIG's field office locations have undergone changes since this SORN was last updated. The proposed SORN will not list the location of specific field offices to avoid the need to update the SORN as locations of OIG field offices change. OIG's field offices are available on the OIG Web site. Accordingly, listing of individual regional offices in the SORN is not necessary.

The categories of individuals and records covered by the system have been revised to more clearly reflect OIG practice. The revision does not make any substantive change in longstanding OIG practice. Accordingly, there are no privacy impacts associated with these changes.

The categories of individuals covered by the previously published SORN include present and former DOT employees, DOT contractors and employees as well as grantees, sub-grantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act. In the revised SORN, we clarify that the system includes complainants, individuals alleged to have been involved in wrongdoing, individuals identified as possibly relevant to the investigation or who are contacted by OIG during the investigation; and DOT OIG investigative personnel. The revised SORN does not reflect any expansion of the categories of individuals covered by the system. We are also clarifying the record categories in the system. The previously published SORN describes the categories as the results of investigations. A report of investigation by nature contains many types of personal information. The SORN that has been in place does not, however, describe with particularity the types of personal information that may be contained in this system. The revised SORN gives more information about the categories of records that OIG actually maintains in this system.

The authority for the maintenance of the system has been amended to include additional authority. In 1999, the Motor Carrier Safety Improvement Act, Public Law 106–159, Section 228, clarified that OIG's statutory authority of the Inspector General of the Department of Transportation includes authority to conduct, pursuant to Federal criminal statutes, investigations of allegations that a person or entity has engaged in fraudulent or other criminal activity relating to the programs and operations of the Department or its operating administrations. It also provided that the authority to conduct these investigations extends to any person or entity subject to the laws and regulations of the Department or its operating administrations, whether or not they are recipients of funds from the Department or its operating administrations. Although this law, later codified at 49 U.S.C. § 354, was intended to be a clarification of OIG's existing statutory authority, we believe it appropriate to cite this statute in the authority section of the SORN.

The purposes of the system have been revised to more clearly identify OIG practices. The existing version states that the purposes of the system are to ''[d]ocument the administration of investigations and inquiries conducted under of the Inspector General Act of 1978.'' The Inspector General Act provides authority for OIG to conduct a number of different types of investigations. The proposed version contains more specific purposes for the system, but makes no substantive changes.

The routine uses have been updated to reflect current practices with the OIG community. New routine uses include disclosure of records in this system of records to the media and the public when the public interest requires and when such disclosure does not constitute an unwarranted invasion of privacy. The routine use for public and media disclosures is to fulfill the mission of the Inspector General to deter and detect waste, fraud, abuse, and violations of law. It could be used for media releases for purposes such as helping to locate suspects or publicizing particular cases to maximize their deterrent value. These types of disclosures will require the approval of OIG counsel after review of the privacy interests involved and the need for public disclosure. We also propose a routine use for disclosure to individuals who are in danger or in situations involving an imminent danger of death or physical harm. The new routine uses also include disclosure of records to recipients of Federal funds and entities regulated by DOT when such disclosure is for the purpose of recovering DOT funds or enabling disciplinary or corrective action. This routine use would help employers to take appropriate action with respect to their employees, contractors, subcontractors, and others who have committed violations of law, agency policy, or other misconduct. We also seek a routine use for disclosures to other Federal agencies the purpose of oversight, such as peer reviews of the OIG Office of Investigations. Accordingly, any effects on privacy interests due to these routine uses are justified, appropriate, and in the public interest.

The revised SORN also updates storage, retrievability, and safeguards to reflect modern standards. For instance, the storage and retrievability sections explicitly reference the use of electronic records. The access controls on electronic records include two-factor authentication, password protection features, and network authentication. These new access controls increase the privacy protections afforded to these records.

The retention and disposal section reflects the National Archives and Records Administration (NARA)-approved disposition schedule for these records which was approved since the last update to the SORN.

The system manager and address is being changed to reflect a title change for the head of the OIG Office of Investigations. The previously published SORN lists the system manager as the Assistant Inspector General for Investigations. The duties, functions, and authority for the Principal Assistant Inspector General for Investigations are in all material respects the same as those formerly held by the Assistant Inspector General for Investigations. In addition, the address of the system manager is being updated to reflect a relocation of the Department of Transportation to a new building within the District of Columbia. Accordingly, there are no substantive changes to these sections. The record source categories more clearly state the types of sources for records that are obtained for this system. The previously published SORN states that record sources are obtained from interviews, review of records and other authorized investigative techniques. The previously published SORN emphasizes the methods by which OIG obtains records.

In this revision, we seek to clarify the types of individuals from which OIG obtains records. These changes do not reflect any substantive changes.

Consistent with DOT's information sharing mission, information stored in the DOT/OST 100 Investigative Record System system of records may be shared with appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will only take place after OIG determines that the receiving agency has a need to know the information to carry out law enforcement or other functions consistent with the routine uses set forth in this system of records notice.

There will be no change to the Privacy Act exemptions previously established for this system of records. The Appendix to Part 10, Title 49, Code of Federal Regulations, contains the Privacy Act exemptions for all DOT systems of records. Paragraph D of Part II of the Appendix provides that those portions of DOT/OST 100 consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or access to classified information or used to determine potential for promotion in the armed services, are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a to the extent that disclosure of such material would reveal the identity of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k)(5) and (7)). These exemptions under (k)(5) and (k)(7) appear to have been inadvertently omitted when DOT/OST 100 was last published in 2000. The revised SORN corrects this error and harmonizes the SORN with these exemptions that have been codified in Federal regulations for many years.

The exemption for records used to determine promotion in the armed forces potential is needed for records relating to the United States Coast Guard (USCG). USCG was part of DOT until its transfer to the Department of Homeland Security in March 2003. OST/DOT 100 contains records of investigations relating to USCG programs and operations. Until these records reach their end of the retention period, OIG has need of this exemption. After the retention period is over, OIG will re-assess its need for this exemption.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS:

Department of Transportation (DOT)/OST–100.

SYSTEM NAME:

Department of Transportation/Office of the Inspector General—100 Investigative Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Records are maintained at the DOT OIG Headquarters in Washington, DC, and in DOT OIG field offices nationwide. Records are also maintained by Federal Records Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing complaints of criminal, civil, or administrative violations, including, but not limited to, fraud, waste, or mismanagement; individuals alleged to have been involved in such violations; individuals identified as having been adversely affected by matters investigated by the OIG; individuals who have been identified as possibly relevant to, or who are contacted as part of, an OIG investigation, including: (A) current and former employees of the DOT, other Federal agencies, and DOT contractors, grantees, and persons whose association with current and former employees relate to alleged violations under investigation; and, (B) witnesses, complainants, confidential informants, suspects, defendants, or parties who have been identified by the DOT OIG, other DOT components, other agencies, or members of the general public in connection with authorized OIG functions; and DOT OIG employees performing investigative functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Investigative agent name and contact information
- Individual's name and aliases;
- Date of birth;
- Social Security Number;
- Telephone and cell phone numbers;
- Physical and mailing addresses;
- Electronic mail addresses;
- Physical description;
- Citizenship;
- Photographs;
- Job title, employment position, and other employment data;
- Medical history;
- Any other personal information relevant to the subject matter of an OIG investigation;
- Investigative files containing complaints and allegations, witness statements; transcripts of electronic monitoring; subpoenas and legal opinions and advice; reports of investigation; reports of criminal, civil, and administrative actions taken as a result of the investigation; and other relevant evidence;
- Property receipts establishing chain of custody of evidence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, and 49 U.S.C. 354.

PURPOSE(S):

The records and information collected and maintained in this system are used to document the processing of allegations of violations of criminal, civil, and administrative laws and regulations relating to DOT programs, operations, and employees, as well as contractors and other individuals and entities associated with DOT; monitor case assignments, status, disposition, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding misconduct and other allegations; track legal actions taken following referrals to the Department of Justice for prosecution or litigation; create and report statistical information; and manage property records establishing chain of custody of evidence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To other Federal, State, local, or foreign agencies or administrations, and licensing and professional discipline authorities, having interest or jurisdiction in the matter.

2. To third parties in the course of an investigation, when necessary to obtain pertinent information.

3. To any person when disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of DOT, when such recovery will accrue to the benefit of the United States, or when disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary or corrective action to maintain the integrity of DOT programs or operations.

4. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

5. To media and the public when the public interest requires, unless it is determined by OIG counsel that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

6. To an individual or individuals who are in danger or in situations involving an imminent danger of death or physical injury.

7. To other agencies and the Council of Inspectors General on Integrity and Efficiency (CIGIE) for purposes of conducting and reviewing peer reviews of the OIG to ensure adequate internal safeguards and management procedures exist or to ensure that standards applicable to Government audits, investigations, or other agency activities are applied and followed.

8. For other routine uses of the information, applicable to all DOT Privacy Act systems of Records, see ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically and/or on paper in secure facilities. Electronic records may be stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABLITY:

Paper media are retrieved alphabetically by name of subject or complainant, by case number, and/or by special agent name and/or employee identifying number. Electronic media are retrieved by the name or identifying number for a complainant, subject, victim, or witness; by case number; by special agent name or other personal identifier; or by field office designation.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Paper files are stored in file cabinets in a locked file room to which only authorized personnel are provided access, on a need-to-know basis.

RETENTION AND DISPOSAL:

Records will be retained and disposed in accordance with National Archives and Records Administration (NARA) records disposition schedule for OIG Investigative Case Files (N1–398–02–1, March 3, 2002).

Files containing information or allegations which old, are of an investigative nature but do not relate to a specific investigation such as anonymous or vague allegations not warranting an investigation, matters referred to constituents or other agencies for handling, and support files providing general information which may prove useful in Inspector General investigations are destroyed when 5 years old.

All other investigative case files (except those that are unusually significant for documenting major violations of criminal law or ethical standards by agency officials or others) are placed in inactive files when case is closed. The cutoff for inactive files occurs at the end of fiscal year. These files are destroyed ten years after cut off. The disposition of significant cases (i.e., those that result in national media attention, Congressional investigations and/or substantive changes in agency policy or procedures) will be determined by NARA and will be scheduled separately.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Principal Assistant Inspector General for Investigations, DOT OIG, Seventh Floor, JI–1, 1200 New Jersey Ave. SE., Washington, DC 20590.

NOTIFICATION PROCEDURE:

The Secretary of Transportation has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, the Office of Inspector General will consider individual requests to determine whether or not information may be released.

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DOT or OIG FOIA Officer whose contact information can be found at *http://www.dot.gov/foia* under ''Contact Us.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Departmental Freedom of Information Act Office, U.S. Department of Transportation, Room W94–122, 1200 New Jersey Ave. SE., Washington, DC 20590, ATTN: FOIA request.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Freedom of Information Act Officer, *http://www.dot.gov/foia* or 202.366.4542. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;

• Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from sources including, but not limited to, the individual record subjects; DOT employees, grantees, and contractors; employees of Federal, State, local, and foreign agencies; and other persons and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3)–(4); (d); (e)(1)–(3); (e)(4)(G)–(I); (e)(5); (e)(8); and (f)–(g).

Pursuant to 5 U.S.C. 552a(k)(1), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3); (d); (e)(4)(G)–(I) and (f).

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3) and (d).

Pursuant to 5 U.S.C. 552a(k)(5) and (k)(7), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3); (d); (e)(4)(G)–(I); and (f).

Issued in Washington, DC, on July 19, 2012.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2012–17696 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Private Partnerships Public Meeting

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of meeting.

SUMMARY: The FAA is conducting a public meeting on August 7 regarding program design and implementation of an equipage incentives program for commercial aircraft and general aviation to equip their aircraft with Next Generation Air Transportation (NextGen) capabilities, pursuant to the FAA's authority in the FAA Modernization and Reform Act of 2012 (sec. 221). The purpose of this meeting is to serve as an information sharing session.

FOR FURTHER INFORMATION CONTACT: Ann Tedford, Office of Finance and Management: Telephone (202) 267–8930: Email: *9–AWA–APO–NextGenIncentives@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA Modernization and Reform Act of 2012 granted authority for the Secretary of Transportation to establish an equipage incentive program to equip US registered aircraft operating in the National Airspace System (NAS) in the interest of achieving NextGen capabilities.

The goal for an equipage program would be to encourage deployment of NextGen capable aircraft in the NAS sooner than would have occurred otherwise. Specifically, FAA would aim to increase the speed of adoption of NextGen equipage, which will accelerate delivery of NextGen benefits by reducing the time of mixed equipage operations. The FAA is examining various methods of reducing the Government's risk and determining the extent of industry interest in the program. The initial meeting on May 30 served to share FAA's preliminary thinking and seek industry feedback about what factors are beneficial to the various stakeholders, if such a program were to be created.

Meeting Information

Public meeting at Federal Aviation Administration Headquarters (800 Independence Avenue SW., Washington, DC 20591) on August 7, 2012, from 1:00pm to 3:30pm. The meeting will also be available to view live on-line. The purpose of the meeting is to share the evolution of our thinking based on what the agency heard from stakeholders subsequent to the initial PPP Meeting on May 30 and to communicate the agency's next steps. While several stakeholder groups have provided written and oral feedback to FAA since that May 30 meeting, the operator community has not provided much comment on this topic. The FAA is interested in hearing from this segment of the community about whether and how such a program would achieve the desired result of accelerating deployment of NextGen capable aircraft in the NAS sooner than would have occurred otherwise. The FAA has also received limited feedback from potential private partners and would encourage feedback from interested partners as well. Comments, questions and statements in advance of this August 7 meeting should be submitted to: *9-AWA–APO-NextGenIncentives@faa.gov.*

The FAA recognizes that some of the information the agency is seeking might be considered proprietary or commercially sensitive. The FAA will take all steps needed to protect any information provided that is marked proprietary or commercially sensitive.

RSVPs will be required for meeting attendance as well as webcast viewing. RSVP by August 3 to: *http://www.faa.gov/about/initiatives/equipage_incentives/.* Background material, meeting agenda, and details of participation webcast for the August 7 meeting can also be obtained at: *http://www.faa.gov/about/initiatives/equipage_incentives/.*

Issued in Washington, DC, on July 11, 2012.

Julie Oettinger,

Assistant Administrator for Policy, International Affairs and Environment.

[FR Doc. 2012–17611 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–29]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and

must be received on or before August 9, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0582 using any of the following methods:

• *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 9, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0582.

Petitioner: Ross McCurdy.

Section of 14 CFR Affected: 14 CFR 61.133(a).

Description of Relief Sought: Petitioner requests relief from certain limitations of his private pilot certificate. The exemption, if granted, would allow the petitioner and other pilots to receive compensation for expenses for promotional and educational flights in a CE–182 aircraft that uses an alternative fuel.

[FR Doc. 2012–17715 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2011–0125]

Section 4(f) Policy Paper

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability; response to comments.

SUMMARY: This document provides notice of the availability of the final Section 4(f) Policy Paper that will provide guidance on the procedures FHWA will follow when approving the use of land from publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects.

DATES: *Effective Date:* July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. MaryAnn Naber, FHWA Office of Planning, Environment, and Realty, (202) 366–2060, or via email at *MaryAnn.Naber@dot.gov*. For legal questions, please contact Ms. Diane Mobley, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366–1366, or via email at *Diane.Mobley@dot.gov*. Business hours for FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov* under docket ID FHWA–2011–0125. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. It is also available on FHWA's Web site at: *http://www.fhwa.dot.gov*. In addition, a hard copy of the final Section 4(f) Policy Paper may be viewed and copied at the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Background

Section 4(f) concerns the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for transportation projects funded or approved by agencies of the U.S. Department of Transportation. Although these requirements are now codified at 23 U.S.C. 138 and 49 U.S.C. 303, the subject matter remains commonly referred to as ''Section 4(f)'' because the requirements originated in Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89–670, 80 Stat. 931). The FHWA's Section 4(f) regulations, entitled ''Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,'' were promulgated in 2008 and are codified at 23 CFR Part 774. The Section 4(f) Policy Paper provides guidance on the procedures that FHWA will follow when approving the use of land from publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects.

This Section 4(f) Policy Paper replaces the previous Section 4(f) Policy Paper that FHWA issued in 2005. Later in 2005, Congress amended Section 4(f) in Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144). This version of the Section 4(f) Policy Paper incorporates the changes that were made in Section 6009 of SAFETEA–LU and the 2008 regulations. The Section 4(f) Policy Paper consists of two parts: Part I provides an overview and background information, a chronological description of the analysis process that FHWA follows to comply with Section 4(f) for a typical project, and a discussion of recommended documentation practices in various situations. Part II consists of frequently encountered questions and answers.

Comments on the Draft Section 4(f) Policy Paper

On January 4, 2012, FHWA published a notice in the **Federal Register** at 77 FR 321 announcing the availability of the draft Section 4(f) Policy Paper with a request for comments. The FHWA carefully considered all comments received. Comments were submitted by 12 State DOTs, 3 Federal agencies, 2 Indian tribes, 1 transit agency, 4 trade associations/interest groups, and 9 individuals. The comments are available for public review in the docket referenced above.

Overall, the commenters indicate that the Section 4(f) Policy Paper will be helpful. The majority of changes made in response to the comments were clarifications to the language in the draft rather than substantive changes to FHWA's 4(f) policies. Several commenters suggested policy changes that would conflict with FHWA's statutory or regulatory obligations; those comments were not adopted. For example, one commenter requested that the final decisionmaking authority be vested in the officials with jurisdiction over Section 4(f) property rather than FHWA. Many commenters offered formatting, grammatical, or editorial suggestions; those types of comments were adopted when deemed appropriate.

One complex topic on which a number of comments were received concerned properties with some characteristics that may be similar to a wildlife and waterfowl refuge, such as a private property with a conservation-type easement, and how FHWA determines if such properties are considered to be wildlife and waterfowl refuges for purposes of Section 4(f). The FHWA makes these determinations on an individual, property-by-property basis following the guidelines described in Q&As 1A, 1B, 1C, 1D, and 1E. The FHWA clarified those Q&As in the final version but did not adopt commenter recommendations to make categorical decisions, based for example on various Federal grant programs, or to ignore whether a property with a conservation easement is or is not open to the public.

Several commenters questioned whether various aspects of the Policy Paper are in the nature of recommendations or are actual requirements. The final Section 4(f) Policy Paper does not impose requirements beyond what is currently required by statute or regulation and includes references to the statute or regulation providing the basis for all requirements mentioned in the Policy Paper. One commenter asked that a formal dispute resolution process be created and a few other commenters asked for a mandate that various findings and disagreements must be published in an Environmental Impact Statement. Although these suggestions were not adopted, additional detail about recommended practices was added to the discussion in Section 4.0, *Documentation.* There were also requests for various visual aides such as matrices or tables. As a result, an overview flowchart of the Section 4(f) process was created and added as an appendix. Finally, internal U.S. Department of the Interior (DOI) instructions for distribution that had been included as an appendix in the draft Policy Paper were revised by the DOI after publication of the draft Policy Paper. The final Policy Paper includes a link to the relevant area of DOI's Web site in lieu of including the instructions as an appendix.

The main changes from the draft to the final version in *Part I—Section 4(f) Overview* are described in this paragraph. The headings for Section 1.2 were updated and Section 1.2.2, *Role of Officials with Jurisdiction,* now notes that concurrences should be in writing, and that the regulations require only a ''lack of objection'' rather than ''concurrence'' prior to applying the exception for archeological sites of minimal value for preservation in place. Section 1.3, *When does Section 4(f) apply*?, now notes that an obligation of construction funds is an ''approval'' for purposes of Section 4(f), as well as noting that there are regulatory applicability rules and exceptions. In Section 3.2, *Assessing use of Section 4(f) Properties,* guidance was added about the meaning of ''substantially impaired'' (also in Q&A 7A), as well as guidance on determining the boundaries of a protected property. Section 3.3.2, *Programmatic Section 4(f) Evaluations,* now notes that programmatic evaluations can be national, regional, or local. Within Section 3.3.3.1, *Feasible and Prudent Avoidance Alternatives,* language was added emphasizing the need to try and avoid using Section 4(f) property when it is feasible and prudent to do so. Section 3.3.3.2., *Least Overall Harm,* now notes, consistent with the preamble to the Section 4(f) regulations, that when two or more alternatives are substantially equal, FHWA can approve any of those alternatives. The subject of documentation was moved to its own Section, 4.0, and additional guidance was added.

The main changes from the draft to the final version in *Part II—Questions and Answers Regarding Section 4(F) Applicability and Compliance* are described in this paragraph. Q&A 1E now includes, consistent with Q&A 17C, the possibility that a site purchased as mitigation for a transportation project could be considered a refuge for purposes of Section 4(f) if the mitigation site meets all of the applicable criteria for Section 4(f) status as a refuge. The Q&A 2A now explains, consistent with prior FHWA Section 4(f) Policy Papers, the circumstances where FHWA may apply Section 4(f) to a historic site that is not on or eligible for the National Register of Historic Places (NR). The Q&A 2B, concerning phased Section 106 consultation processes, was moved from its former location at Q&A 10B, and explanation added about the level of effort that should be undertaken to identify Section 4(f) properties. The Q&A 6 now notes that Traditional Cultural Properties may be eligible for the NR under other criteria besides just archeology. It was determined that former Q&A 13D concerning the phasing-in of the *de minimis* impact legislation was no longer necessary due to the passage of time and it was removed as a result. In Q&A 24 examples were added of the types of government action that could indicate the reservation of a transportation corridor within a new park, recreation area or refuge. Finally, a new Q&A 30 was added to explain how FHWA complies with Section 4(f) in emergencies.

Authority: 23 U.S.C. 101, 109, 138 and 139; 23 CFR 1.32 and 774; 49 U.S.C. 303; and, 49 CFR 1.48(b)).

Issued on: July 11, 2012.

Victor M. Mendez,

Administrator.

Final Section 4(f) Policy Paper: The text of the final Section 4(f) Policy Paper is as follows:

FHWA Section 4(f) Policy Paper

Part I—Section 4(f) Overview

1.0 Introduction

This *Section 4(f) Policy Paper* supplements the Federal Highway Administration's (FHWA) regulations governing the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. Although these requirements are now codified at 23 U.S.C. 138 and 49 U.S.C. 303, this subject matter remains commonly referred to as Section 4(f) because the requirements originated in Section 4(f) of the *Department of Transportation Act of 1966* (Pub. L. 89–670, 80 Stat. 931). The *Section 4(f) Policy Paper* replaces the FHWA's 2005 edition of the document. The FHWA's Section 4(f) regulations, entitled *Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,* are codified at 23 CFR Part 774. Many of the terms used in this *Section 4(f) Policy Paper* are defined in the regulation at 23 CFR 774.17.

1.1 Purpose

This *Section 4(f) Policy Paper* was written primarily to aid FHWA personnel with administering Section 4(f) in a consistent manner. In situations where a State has assumed the FHWA responsibility for Section 4(f)

compliance, this guidance is intended to help the State fulfill its responsibilities. Such situations may arise when Section 4(f) responsibilities are assigned to the State in accordance with 23 U.S.C. 325, 326, 327, or a similar applicable law. Unless otherwise noted, references to ''FHWA'' in this document include a State department of transportation (State DOT) acting in FHWA's capacity pursuant to an assumption of FHWA's responsibilities under such laws.

This guidance is also intended to help State DOTs and other applicants for grants-in-aid for highway projects to plan projects that minimize harm to Section 4(f) properties. Experience demonstrates that when Section 4(f) is given consideration early in project planning, the risk of a project becoming unnecessarily delayed due to Section 4(f) processing is minimized. Ideally, applicants should strive to make the preservation of Section 4(f) properties, along with other environmental concerns, part of their long and short range transportation planning processes. Information and tools to help State DOTs, metropolitan planning organizations and other applicants accomplish this goal are available on FHWA's Planning and Environmental Linkages Web site located at: *http://environment.fhwa.dot.gov/integ/index.asp.*

This *Section 4(f) Policy Paper* is based on and is intended to reflect: the statute itself, the legislative history of the statute; the requirements of the Section 4(f) regulations; relevant court decisions; and FHWA's experience with implementing the statute over four decades, including interactions with the public and with agencies having jurisdiction over Section 4(f) properties. The information presented is not regulatory and does not create any right of action that may be enforced by a private citizen in a court of law. This *Section 4(f) Policy Paper* sets forth the official policy of FHWA on the applicability of Section 4(f) to various types of land and resources, and other Section 4(f) related issues. While the other United States Department of Transportation (U.S. DOT) agencies may choose to rely upon some or all of this *Section 4(f) Policy Paper* as a reference, it was not written as guidance for any U.S. DOT agency other than FHWA.

This guidance addresses the majority of situations related to Section 4(f) that may be encountered in the development of a transportation project. If a novel situation or project arises which does not completely fit the situations or parameters described in this *Section 4(f) Policy Paper,* the relevant FHWA Division Office,[1] the FHWA Headquarters Office of Project Development and Environmental Review, the Resource Center Environment Technical Service Team, and/or the Office of Chief Counsel should be consulted as appropriate for assistance. For additional information on Section 4(f) beyond that which is contained in this *Section 4(f) Policy Paper,* readers should refer to the FHWA Environmental Review Toolkit.[2]

1.2 Agency Authority and Responsibilities

1.2.1 Role of U.S. DOT

The authority to administer Section 4(f) and make Section 4(f) approvals resides with the Secretary of the U.S. DOT. The statute designates the Secretaries of the Interior, Housing and Urban Development, and Agriculture, as well as the States, for consultation roles as appropriate. This means that the Secretary of Transportation is responsible for soliciting and considering the comments of these other entities, as well as the appropriate official(s) with jurisdiction over the Section 4(f) property, as part of the administration of Section 4(f). However, the ultimate decision maker is the Secretary of Transportation. In a number of instances, the Section 4(f) regulations require the concurrence of various officials in limited circumstances as discussed below.

The Secretary of Transportation has delegated the authority for administering Section 4(f) to the FHWA Administrator in 49 CFR 1.48. The authority has been re-delegated to the FHWA Division Administrators, the Associate Administrator for Planning, Environment, and Realty, and the Federal Lands Highway Associate Administrator by *FHWA Order M1100.1A,* Chapter 5, Section 17e and Chapter 6, Section 7d. Any approval of the use of Section 4(f) property, other than a use with a *de minimis* impact or a use processed with an existing programmatic Section 4(f) evaluation is subject to legal sufficiency review by the Office of Chief Counsel.

1.2.2 Role of Officials With Jurisdiction

Consultation

The regulations define the entities and individuals who are considered the officials with jurisdiction for various types of property in 23 CFR 774.17. In the case of historic sites, the officials with jurisdiction are the State Historic Preservation Officer (SHPO), or, if the property is located on tribal land, the Tribal Historic Preservation Officer (THPO).[3] If the property is located on tribal land but the relevant Indian tribe has not assumed the responsibilities of the SHPO, then a representative designated by the tribe shall be recognized as an official with jurisdiction in addition to the SHPO. When the Advisory Council on Historic Preservation (ACHP) is involved in consultation concerning a property under Section 106 of the *National Historic Preservation Act* (NHPA) (16 U.S.C. 470), the ACHP is also an official with jurisdiction over that resource for the purposes of Section 4(f). When the Section 4(f) property is a National Historic Landmark (NHL), the designated official of the National Park Service is also an official with jurisdiction over that resource for the purposes of Section 4(f). In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the officials with jurisdiction are the officials of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property.

Coordination

The regulations require coordination with the official(s) with jurisdiction for the following situations prior to Section 4(f) approval (recognizing that additional coordination may be required under other statutes or regulations):

- Prior to making approvals, (23 CFR 774.3(a));
- Determining least overall harm, (23 CFR 774.3(c));
- Applying certain programmatic Section 4(f) evaluations, (23 CFR 774.5(c));
- Applying Section 4(f) to properties that are subject to Federal encumbrances, (23 CFR 774.5(d));
- Applying Section 4(f) to archeological sites discovered during construction, (23 CFR 774.9(e));
- Determining if a property is significant, (23 CFR 774.11(c));
- Determining application to multiple-use properties, (23 CFR 774.11(d));
- Determining applicability of Section 4(f) to historic sites, (23 CFR 774.11(e));
- Determining constructive use, (23 CFR 774.15(d));

[1] This may be a Federal Lands Highway Division Office if the project is located on Federal lands.

[2] *http://www.environment.fhwa.dot.gov/index.asp.*

[3] *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities (16 U.S.C. 470*w*).

• Determining if proximity impacts will be mitigated to equivalent or better condition, (23 CFR 774.15(f)(6)); and

• Evaluating the reasonableness of measures to minimize harm, (23 CFR 774.3(a)(2) and 774.17).

Lack of Objection

The regulations require a finding that the official(s) with jurisdiction have been consulted and ''have not objected'' in the following situations:

• When applying the exception for restoration, rehabilitation, or maintenance of historic transportation facilities, (23 CFR 774.13(a)); and

• When applying the exception for archeological sites of minimal value for preservation in place. (23 CFR 774.13(b)(2)).

Concurrence

The regulations require written concurrence of the official(s) with jurisdiction in the following situations:

• Finding there are no adverse effects prior to making *de minimis* impact findings, (23 CFR 774.5(b));

• Applying the exception for temporary occupancies, (23 CFR 774.13(d)); and

• Applying the exception for transportation enhancement activities and mitigation activities, (23 CFR 774.13(g)).

1.3 When does section 4(f) apply?

The statute itself specifies that Section 4(f) applies when a U.S. DOT agency approves a transportation program or project that uses Section 4(f) property. The FHWA does not currently approve any transportation programs; thus, Section 4(f) is limited to project approvals. In addition, for the statute to apply to a proposed project there are four conditions that must all be true:

(1) The project must require an approval [4] from FHWA in order to proceed;

(2) The project must be a transportation project;[5]

(3) The project must require the use of land from a property protected by Section 4(f) (*See* 23 U.S.C. 138(a) and 49 U.S.C. 303(a)); and

(4) None of the regulatory applicability rules or exceptions applies (*See* 23 CFR 774.11 and 13).

[4] Examples include the obligation of construction funds and the approval of access modifications on the Interstate System.

[5] Most projects funded by FHWA are transportation projects; however, in a few instances certain projects eligible for funding, such as the installation of safety enhancement barriers on a bridge, have been determined not to have a transportation purpose and therefore do not require a Section 4(f) approval.

Examples of the types of proposed situations where Section 4(f) would not apply include, but are not limited to:

(1) A transportation project being constructed solely using State or local funds and not requiring FHWA approval.

(2) A project intended to address a purpose that is unrelated to the movement of people, goods, and services from one place to another (i.e., a purpose that is not a transportation purpose).

(3) A project to be located adjacent to a Section 4(f) property, causing only minor proximity impacts to the Section 4(f) property (i.e., no constructive use).

(4) A project that will use land from a privately owned park, recreation area, or refuge.

Additional information about these examples and many other examples of situations where Section 4(f) approval is or is not required is located in the questions and answers provided in Part II of this *Section 4(f) Policy Paper.* In situations where FHWA has determined that Section 4(f) does not apply, the project file should contain sufficient information to demonstrate the basis for that determination (*See* Section 4.0, *Documentation*).

2.0 Background

The FHWA originally issued the *Section 4(f) Policy Paper* in 1985, with minor amendments in 1989. A 2005 edition provided comprehensive new guidance on when and how to apply the provisions of Section 4(f), including how to choose among alternatives that all would use Section 4(f) property. Later in 2005, Congress substantially amended Section 4(f) in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA–LU), (Pub. L. 109–59 (Aug. 10, 2005), 119 Stat. 1144). SAFETEA–LU directed the U.S. DOT to revise its Section 4(f) regulations. In response, FHWA and the Federal Transit Administration consulted with interested agencies and environmental organizations before drafting a notice of proposed rulemaking. The notice of proposed rulemaking was published for comment in the **Federal Register** (71 *FR* 42611, July 27, 2006).

Following careful consideration of the comments submitted, the new Section 4(f) regulations were issued in March 2008 (73 *FR* 13368, March 12, 2008). A minor technical correction followed shortly thereafter (73 *FR* 31609, June 3, 2008). The new Section 4(f) regulations clarified the feasible and prudent standard, implemented a new method of compliance for *de minimis* impact situations, and updated many other aspects of the regulations, including the adoption of regulatory standards based upon the 2005 edition of the *Section 4(f) Policy Paper* for choosing among alternatives that all use Section 4(f) property. This 2012 edition of the *Section 4(f) Policy Paper* includes guidance for all of the changes promulgated in the Section 4(f) regulations in 2008.

If any apparent discrepancy between this *Section 4(f) Policy Paper* and the Section 4(f) regulation should arise, the regulation takes precedence. The previous editions of this *Section 4(f) Policy Paper* are no longer in effect.

3.0 Analysis Process

3.1 Identification of Section 4(f) Properties

Section 4(f) requires consideration of:

• Parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public

• Publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public to the extent that public access does not interfere with the primary purpose of the refuge [6]

• Historic sites of national, state, or local significance in public or private ownership regardless of whether they are open to the public (*See* 23 U.S.C. 138(a) and 49 U.S.C. 303(a))

When private institutions, organizations, or individuals own parks, recreational areas or wildlife and waterfowl refuges, Section 4(f) does not apply, even if such areas are open to the public. However, if a governmental body has a permanent proprietary interest in the land (such as a permanent easement, or in some circumstances, a long-term lease), FHWA will determine on a case-by-case basis whether the particular property should be considered publicly owned and, thus, if Section 4(f) applies (*See* Questions 1B and 1C). Section 4(f) also applies to all historic sites that are listed, or eligible for inclusion, in the National Register of Historic Places (NR) at the local, state, or national level of significance regardless of whether or not the historic site is publicly owned or open to the public.

A publicly owned park, recreational area or wildlife or waterfowl refuge must be a significant resource for

[6] Since the primary purpose of a refuge may make it necessary for the resource manager to limit public access for the protection of wildlife or waterfowl, FHWA's policy is that these facilities are not required to *always* be open to the public. Some areas of a refuge may be closed to public access at all times or during parts of the year to accommodate preservation objectives.

Section 4(f) to apply (*See* 23 CFR 774.11(c) and Question 1A). Resources which meet the definitions above are presumed to be significant unless the official with jurisdiction over the site concludes that the entire site is not significant. The FHWA will make an independent evaluation to assure that the official's finding of significance or non-significance is reasonable. In situations where FHWA's determination contradicts and overrides that of the official with jurisdiction, the reason for FHWA's determination should be documented in the project file and discussed in the environmental documentation for the proposed action.

Section 4(f) properties should be identified as early as practicable in the planning and project development process in order that complete avoidance of the protected resources can be given full and fair consideration (*See* 23 CFR 774.9(a)). Historic sites are normally identified during the process required under Section 106 of the NHPA and its implementing regulations (*See* 36 CFR Part 800). Accordingly, the Section 106 process should be initiated and resources listed or eligible for listing in the NR identified early enough in project planning or development to determine whether Section 4(f) applies and for avoidance alternatives to be developed and assessed (*See* 23 CFR 774.11(e)).

3.2 Assessing *Use* of Section 4(f) Properties

Once Section 4(f) properties have been identified in the study area, it is necessary to determine if any of them would be used by an alternative or alternatives being carried forward for detailed study. *Use* in the Section 4(f) context is defined in 23 CFR 774.17 (*Definitions*) and the term has very specific meaning (*see* also Question 7 in this *Section 4(f) Policy Paper*). Any potential use of Section 4(f) property should always be described in related documentation consistent with this definition, as well as with the language from 23 CFR 774.13(d) (*Exceptions-temporary occupancy*) and 23 CFR 774. 15 (*Constructive Use Determinations*), as applicable. It is not recommended to substitute similar terminology such as affected, impacted, or encroached upon in describing when a use occurs, as this may cause confusion or misunderstanding by the reader.

The most common form of use is when land is permanently incorporated into a transportation facility. This occurs when land from a Section 4(f) property is either purchased outright as transportation right-of-way or when the applicant for Federal-aid funds has acquired a property interest that allows permanent access onto the property such as a permanent easement for maintenance or other transportation-related purpose.

The second form of use is commonly referred to as temporary occupancy and results when Section 4(f) property, in whole or in part, is required for project construction-related activities. The property is not permanently incorporated into a transportation facility but the activity is considered to be adverse in terms of the preservation purpose of Section 4(f). Section 23 CFR 774.13(d) provides the conditions under which ''temporary occupancies of land* * *are so minimal as to not constitute a use within the meaning of Section 4(f).'' If all of the conditions in Section 774.13(d) are met, the temporary occupancy does not constitute a use. If one or more of the conditions for the exception cannot be met, then the Section 4(f) property is considered used by the project even though the duration of onsite activities is temporary. Written agreement by the official(s) with jurisdiction over the property with respect to all the conditions is necessary and should be retained in the project file. Assurances that documentation will eventually be obtained via subsequent negotiations are not acceptable. Also, it is typical that the activity in question will be detailed in project plans as an integral and necessary feature of the project.

The third and final type of use is called constructive use. A constructive use involves no actual physical use of the Section 4(f) property via permanent incorporation of land or a temporary occupancy of land into a transportation facility. A constructive use occurs when the proximity impacts of a proposed project adjacent to, or nearby, a Section 4(f) property result in substantial impairment to the property's activities, features, or attributes that qualify the property for protection under Section 4(f). As a general matter this means that the value of the resource, in terms of its Section 4(f) purpose and significance, will be meaningfully reduced or lost. The types of impacts that may qualify as constructive use, such as increased noise levels that would substantially interfere with the use of a noise sensitive feature such as a campground or outdoor amphitheater, are addressed in 23 CFR 774.15. A project's proximity to a Section 4(f) property is not in itself an impact that results in constructive use. Also, the assessment for constructive use should be based upon the impact that is directly attributable to the project under review, not the overall combined impacts to a Section 4(f) property from multiple sources over time. Since constructive use is subjective, FHWA's delegation of Section 4(f) authority to the FHWA Division Offices requires consultation with the Headquarters Office of Project Development and Environmental Review prior to finalizing any finding of constructive use.

In making any finding of use involving Section 4(f) properties, it is necessary to have up to date right-of-way information and clearly defined property boundaries for the Section 4(f) properties. For publicly owned parks, recreation areas, and refuges, the boundary of the Section 4(f) resource is generally determined by the property ownership boundary. Up-to-date right-of-way records are needed to ensure that ownership boundaries are accurately documented. For historic properties, the boundary of the Section 4(f) resource is generally the NR boundary. If the historic property boundary of an eligible or listed site has not been previously established via Section 106 consultation, care should be taken in evaluating the site with respect to eligibility criteria. Depending upon its contributing characteristics, the actual legal boundary of the property may not ultimately coincide with the NR boundary. Since preliminary engineering level of detail (not final design) is customary during environmental analyses, it may be necessary to conduct more detailed preliminary design in some portions of the study area to finalize determinations of use.

Late discovery and/or late designations of Section 4(f) properties subsequent to completion of environmental studies may also occur. Each situation must be assessed to determine if the change in Section 4(f) status results in a previously unidentified need for a Section 4(f) approval pursuant to 23 CFR 774.13(c) (*See* Question 26). The determination should be considered and documented, as appropriate, in any re-evaluation of the project.

3.3 Approval Options

When FHWA determines that a project as proposed may use Section 4(f) property, there are three methods available for FHWA to approve the use:

(1) Preparing a *de minimis* impact determination;

(2) Applying a programmatic Section 4(f) evaluation; or

(3) Preparing an individual Section 4(f) evaluation.

While the applicant will participate in gathering and presenting the documentation necessary for FHWA to

make a Section 4(f) approval, the actual approval action is the FHWA's responsibility. The three approval options are set out in 23 CFR 774.3 and are discussed below.

3.3.1 Determination of a *De Minimis* Impact to Section 4(f) Property

A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

(1) A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or

(2) A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).

In other words, a *de minimis* impact determination is made for the net impact on the Section 4(f) property. The final project NEPA decision document must include sufficient supporting documentation for any measures to minimize harm that were applied to the project by FHWA in order to make the *de minimis* impact determination (*See* 23 CFR 774.7(b)). A use of Section 4(f) property having a *de minimis* impact can be approved by FHWA without the need to develop and evaluate alternatives that would avoid using the Section 4(f) property. A *de minimis* impact determination may be made for a permanent incorporation or temporary occupancy of Section 4(f) property.

A *de minimis* impact determination requires agency coordination and public involvement as specified in 23 CFR 774.5(b). The regulation has different requirements depending upon the type of Section 4(f) property that would be used. For historic sites, the consulting parties identified in accordance with 36 CFR Part 800[7] must be consulted. The official(s) with jurisdiction must be informed of the intent to make a *de minimis* impact determination and must concur in a finding of no adverse effect or no historic properties affected in accordance with 36 CFR Part 800. Compliance with 36 CFR Part 800 satisfies the public involvement and agency coordination requirement for *de minimis* impact findings for historic sites.

For parks, recreation areas, or wildlife and waterfowl refuges, the official(s) with jurisdiction over the property must be informed of the intent to make a *de minimis* impact determination, after which an opportunity for public review and comment must be provided. After considering any comments received from the public, if the official(s) with jurisdiction concurs in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection, then FHWA may finalize the *de minimis* impact determination. The public notice and opportunity for comment as well as the concurrence for a *de minimis* impact determination may be combined with similar actions undertaken as part of the NEPA process. If a proposed action does not normally require public involvement, such as for certain minor projects covered by a categorical exclusion, an opportunity for the public to review and comment on the proposed *de minimis* impact determination must be provided. The opportunity for public input may be part of a public meeting or another form of public involvement. The final determination should be made by the FHWA Division Administrator (or in the case of Federal Lands, the Division Engineer) and all supportive documentation retained as part of the project file (*See* Section 4.0, *Documentation*).

A *de minimis* impact determination (*see* Part II, Questions 11–12) is a finding. It is not an evaluation of alternatives and no avoidance or feasible and prudent avoidance alternative analysis is required. The definition of all possible planning in 23 CFR 774.17 explains that a *de minimis* impact determination does not require the traditional second step of including all possible planning to minimize harm because avoidance, minimization, mitigation, or enhancement measures are included as part of the determination.

A *de minimis* impact determination must be supported with sufficient information included in the project file to demonstrate that the *de minimis* impact and coordination criteria are satisfied (23 CFR 774.7(b)). The approval of a *de minimis* impact should be documented in accordance with the documentation requirements in 23 CFR 774.7(f). These requirements may be satisfied by including the approval in the NEPA documentation—i.e., an Environmental Assessment (EA), Environmental Impact Statement (EIS), or Categorical Exclusion (CE) determination, Record of Decision (ROD), or Finding of No Significant Impact (FONSI),—or in an individual Section 4(f) evaluation when one is prepared for a project. When an individual Section 4(f) evaluation is required for a project in which one or more *de minimis* impact determinations will also be made, it is recommended that the individual Section 4(f) evaluation include the relevant documentation to support the proposed *de minimis* impact determination(s).

In situations where FHWA concludes in the individual Section 4(f) evaluation that there is no feasible and prudent avoidance alternative and there are two or more alternatives that use Section 4(f) property, a least overall harm analysis will be necessary pursuant to 23 CFR 774.3(c) (S*ee* Section 3.3.3.2, *Alternative with Least Overall Harm*). In such instances, while the *de minimis* impact will be considered in that analysis, the *de minimis* impact is unlikely to be a significant differentiating factor between alternatives because the net harm resulting from the *de minimis* impact is negligible. The determination of least overall harm will depend upon a comparison of the factors listed in the regulation, 23 CFR 774.3(c)(1).

3.3.2 Programmatic Section 4(f) Evaluations

Programmatic Section 4(f) evaluations are a time-saving procedural option for preparing individual Section 4(f) evaluations (discussed in Section 3.3.3) for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations are developed by the FHWA based on experience with many projects that have a common fact pattern from a Section 4(f) perspective. Through applying a specific set of criteria, based upon common experience that includes project type, degree of use and impact, the evaluation of avoidance alternatives is standardized and simplified. An approved programmatic Section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in that programmatic evaluation are met. Programmatic evaluations can be nationwide, region-wide, or statewide. The development of any programmatic evaluation, including region-wide and statewide, must be coordinated with the FHWA Office of Project Development and Environmental Review and the FHWA Office of Chief Counsel.

As of the date of publication of this *Section 4(f) Policy Paper,* the FHWA has issued five nationwide programmatic Section 4(f) evaluations:[8]

(1) Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

(2) Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges

[7] Regulations implementing Section 106 of the NHPA.

[8] *http://www.environment.fhwa.dot.gov/4f/4fnationwideevals.asp.*

(3) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites

(4) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges

(5) Nationwide Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property

Before being adopted, all of the nationwide programmatic Section 4(f) evaluations were published in draft form in the **Federal Register** for public review and comment. They were also provided to appropriate Federal agencies, including the Department of the Interior (U.S. DOI), for review. Each programmatic Section 4(f) evaluation was reviewed by FHWA's Office of Chief Counsel for legal sufficiency.

It is not necessary to coordinate project-specific applications of approved programmatic Section 4(f) evaluations with the U.S. DOI unless the U.S. DOI owns or has administrative oversight over the Section 4(f) property involved (is an official with jurisdiction or has an oversight role as described Questions 9D and 31). As specified in the applicable programmatic Section 4(f) evaluation, it is still necessary to coordinate with the official(s) with jurisdiction over such properties. A legal sufficiency review of a project-specific application of an approved programmatic Section 4(f) evaluation is not necessary. As such, a primary benefit to using the prescribed step-by-step approach contained in a programmatic evaluation is the reduction of time to process a Section 4(f) approval.

Documentation required to apply a programmatic Section 4(f) evaluation must support that the specific programmatic criteria have been met (*See* 23 CFR 774.3(d)(1)). A separate Section 4(f) document is not required but an indication in the NEPA documentation that Section 4(f) compliance was satisfied by the applicable programmatic evaluation is required (*See* 23 CFR 774.7(f)). As specified in the programmatic evaluations, the requirement to assess whether there is a feasible and prudent avoidance alternative and all possible planning applies. The necessary information supporting the applicability of the programmatic evaluation will be retained in the project file (*See* Section 4.0, *Documentation*).

3.3.3 Individual Project Section 4(f) Evaluations

An individual Section 4(f) evaluation must be completed when approving a project that requires the use of Section 4(f) property if the use, as described in Sections 3.1 and 3.2 above, results in a greater than *de minimis* impact and a programmatic Section 4(f) evaluation cannot be applied to the situation (23 CFR 774.3). The individual Section 4(f) evaluation documents the evaluation of the proposed use of Section 4(f) properties in the project area of all alternatives. The individual Section 4(f) evaluation requires two findings, which will be discussed in turn:

(1) That there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property; and

(2) That the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the transportation use (*See* 23 CFR 774.3(a)(1) and (2)).

3.3.3.1 Feasible and Prudent Avoidance Alternatives

The intent of the statute, and the policy of FHWA, is to avoid and, where avoidance is not feasible and prudent, minimize the use of significant public parks, recreation areas, wildlife and waterfowl refuges and historic sites by our projects. Unless the use of a Section 4(f) property is determined to have a *de minimis* impact, FHWA must determine that no feasible and prudent avoidance alternative exists before approving the use of such land (*See* 23 CFR 774.3). The Section 4(f) regulations refer to an alternative that would not require the use of any Section 4(f) property as an avoidance alternative. Feasible and prudent avoidance alternatives are those that avoid using any Section 4(f) property and do not cause other severe problems of a magnitude that substantially outweigh the importance of protecting the Section 4(f) property (23 CFR 774.17). This section of the *Section 4(f) Policy Paper* focuses on the identification, development, evaluation, elimination and documentation of potential feasible and prudent avoidance alternatives in a Section 4(f) evaluation document.

The first step in determining whether a feasible and prudent avoidance alternative exists is to identify a reasonable range of project alternatives including those that avoid using Section 4(f) property. The avoidance alternatives will include the no-build. The alternatives screening process performed during the scoping phase of NEPA is a good starting point for developing potential section 4(f) avoidance alternatives and/or design options.[9] Any screening of alternatives that may have occurred during the transportation planning phase may be considered as well. It may be necessary, however, to look for additional alternatives if the planning studies and the NEPA process did not identify Section 4(f) properties and take Section 4(f) requirements into account. If Section 4(f) avoidance alternatives were eliminated during the earlier phases of project development for reasons unrelated to Section 4(f) impacts or a failure to meet the project purpose and need, they may need to be reconsidered in the Section 4(f) process. In addition, it is often necessary to develop and analyze new alternatives, or new variations of alternatives rejected for non-Section 4(f) reasons during the earlier phases.

The no-action or no-build alternative is an avoidance alternative and should be included in the analysis as such. In identifying other avoidance alternatives, FHWA should consider the reasonable alternatives that meet the purpose and need of the project. Potential alternatives to avoid the use of Section 4(f) property may include one or more of the following, depending on project context:

- Location Alternatives—A location alternative refers to the re-routing of the entire project along a different alignment.
- Alternative Actions—An alternative action could be a different mode of transportation, such as rail transit or bus service, or some other action that does not involve construction such as the implementation of transportation management systems or similar measures.
- Alignment Shifts—An alignment shift is the re-routing of a portion of the project to a different alignment to avoid a specific resource.
- Design Changes—A design change is a modification of the proposed design in a manner that would avoid impacts, such as reducing the planned median width, building a retaining wall, or incorporating design exceptions.

When considering alignment shifts and design changes, it is important to

[9] In the Section 4(f) statute, the term *alternative* is used in the context of an option which avoids using land from a Section 4(f) property and is not limited to the context of the end-to-end alternative as defined by the project applicant. This section of the *Section 4(f) Policy Paper* uses the phrase ''avoidance alternatives and/or design options'' in order to clarify that, depending upon the project context, the potential alternatives that should be evaluated to avoid Section 4(f) property may be end-to-end alternatives *or* may be a change to only a portion of the end-to-end project.

keep in mind the range of allowable configurations and design values for roadway elements and different types of roads. These guidelines are contained within the official state standards and/or the ''Green Book,'' properly titled *A Policy on the Geometric Design of Highways and Streets and* published by the American Association of State Highway and Transportation Officials. The guidelines set out the generally acceptable ranges of dimensions for roadway elements and typical applications on different types of roadway facilities. These ranges of values provide planners and designers the ability to develop projects at an acceptable cost and level of performance (e.g. safety, traffic flow, sustainability), while balancing the site-specific conditions, constraints, and implications of design decisions. Where it may be appropriate to select a value or dimension outside of the ranges that are established in State and national guidelines, design exceptions are encouraged and permitted. However, the consideration and selection of a value outside of the established ranges should be based on the context of the facility and an analysis of how the design may affect the safety, flow of traffic, constructability, maintainability, environment, cost, and other related issues.

An important consideration in identifying potential avoidance alternatives is that they should have a reasonable expectation of serving traffic needs that have been identified in the project purpose and need. A final limitation in identifying potential avoidance alternatives is that a project alternative that avoids one Section 4(f) property by using another Section 4(f) property is not an avoidance alternative. The goal is to identify alternatives that would not use any Section 4(f) property. (Note: A determination of a *de minimis* impact for a specific Section 4(f) property may be made without considering avoidance alternatives for that property, even if that use occurs as part of an alternative that also includes other uses that are greater than *de minimis*.) Consequently, at this step of analysis the degree of impact to Section 4(f) property is not relevant—the only question is whether the alternative would require any use of Section 4(f) property because an alternative using any amount of Section 4(f) property is not an avoidance alternative. Subsequent steps in the analysis will consider the degree of impact as well as the availability of measures to minimize impacts.

Once the potential avoidance alternative(s) have been identified, the next task is to determine, for each potential avoidance option, whether avoiding the Section 4(f) property is feasible and prudent. The Section 4(f) regulations specify how FHWA is to determine whether a potential avoidance alternative is feasible and prudent in 23 CFR 774.17. The definition explains that a ''feasible and prudent avoidance alternative'' is one that avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweigh the importance of protecting the Section 4(f) property. In order to determine whether there are other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property, both the feasibility and the prudence of each potential avoidance alternative must be considered.

Care must be taken when making determinations of feasibility and prudence not to forget or de-emphasize the importance of protecting the Section 4(f) property. This stems from the statute itself, which requires that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The regulation incorporates this aspect of the statute in the definition of feasible and prudent avoidance alternative which states that ''it is appropriate to consider the relative value of the resource to the preservation purpose of the statute.'' In effect, the first part of the definition recognizes the value of the individual Section 4(f) property in question, relative to other Section 4(f) properties of the same type. This results in a sliding scale approach that maximizes the protection of Section 4(f) properties that are unique or otherwise of special significance by recognizing that while all Section 4(f) properties are important, some Section 4(f) properties are worthy of a greater degree of protection than others.

The regulations state that a potential avoidance alternative is not feasible if it cannot be built as a matter of sound engineering judgment (23 CFR 774.17). If a potential avoidance alternative cannot be built as a matter of sound engineering judgment it is not feasible and the particular engineering problem with the alternative should be documented in the project files with a reasonable degree of explanation. In difficult situations, the FHWA Division may obtain assistance from FHWA subject matter experts located in FHWA Headquarters or the FHWA Resource Center.

The third and final part of the *feasible and prudent avoidance alternative* definition sets out standards for determining if a potential avoidance alternative is prudent. An alternative is not prudent if:

(1) It compromises the project to a degree that it is unreasonable to proceed in light of the project's stated purpose and need (i.e., the alternative doesn't address the purpose and need of the project);

(2) It results in unacceptable safety or operational problems;

(3) After reasonable mitigation, it still causes severe social, economic, or environmental impacts; severe disruption to established communities; severe or disproportionate impacts to minority or low-income populations; or severe impacts to environmental resources protected under other Federal statutes;

(4) It results in additional construction, maintenance, or operational costs of extraordinary magnitude;

(5) It causes other unique problems or unusual factors; or

(6) It involves multiple factors as outlined above that, while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

The prudence determination involves an analysis that applies each of the six factors, if applicable, to the potential avoidance alternative. If a factor is not applicable FHWA recommends simply noting that fact in the analysis.

Supporting documentation is required in the Section 4(f) evaluation for findings of no feasible and prudent alternatives (*See* 23 CFR 774.7(a)). Documentation of the process used to identify, develop, analyze and eliminate potential avoidance alternatives is very important. The Section 4(f) evaluation should describe all efforts in this regard. This description need not include every possible detail, but it should clearly explain the process that occurred and its results. It is appropriate to maintain detailed information in the project file with a summary in the Section 4(f) evaluation. If the information is especially voluminous, a technical report should be prepared, summarized, and referenced in the Section 4(f) evaluation. The discussion may be organized within the Section 4(f) evaluation in any manner that allows the reader to understand the full range of potential avoidance alternatives identified, the process by which potential avoidance alternatives were identified and analyzed for feasibility and prudence. Possible methods for organizing the discussion include a

chronological discussion; a discussion organized geographically by project alternatives or project phases of construction; or by the type of Section 4(f) properties.

For larger highway projects with multiple Section 4(f) properties in the project area, it may be desirable to divide the analysis into a macro and a micro-level evaluation in order to distinguish the analysis of end-to-end project alternatives that avoid using any Section 4(f) property from the analysis of design options to avoid using a single Section 4(f) property. The macro-level evaluation would address any end-to-end avoidance alternatives that can be developed, as well as any alternative actions to the proposed highway project such as travel demand reduction strategies or enhanced transit service in the project area. The micro-level evaluation would then address, for each Section 4(f) property, whether the highway could be routed to avoid the property by shifting to the left or right, by bridging over, or tunneling under the property, or through another alignment shift or design change. The analysis may be presented in any manner that demonstrates, for each Section 4(f) property used, that there is no feasible and prudent avoidance alternative. Even if all of the alternatives use a Section 4(f) property, there is still a duty to try to avoid the individual Section 4(f) properties within each alternative.

3.3.3.2 Alternative With Least Overall Harm

If the analysis described in the preceding section concludes that there is no feasible and prudent avoidance alternative, then FHWA may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that causes the least overall harm in light of the statute's preservation purpose. Pursuant to substantial case law, if the assessment of overall harm finds that two or more alternatives are substantially equal, FHWA can approve any of those alternatives. This analysis is required when multiple alternatives that use Section 4(f) property remain under consideration.

To determine which of the alternatives would cause the least overall harm, FHWA must compare seven factors set forth in 23 CFR 774.3(c)(1) concerning the alternatives under consideration. The first four factors relate to the net harm that each alternative would cause to Section 4(f) property:

(1) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(2) The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(3) The relative significance of each Section 4(f) property; and

(4) The views of the officials with jurisdiction over each Section 4(f) property.

When comparing the alternatives under these factors, FHWA policy is to develop comparable mitigation measures where possible. In other words, the comparison may not be skewed by over-mitigating one alternative while under-mitigating another alternative for which comparable mitigation could be incorporated. In addition, the mitigation measures relied upon as part of this comparison should be incorporated into the selected alternative. If subsequent design or engineering work occurs after the alternative is selected that requires changes to the mitigation plans for Section 4(f) property, FHWA may require revisions to previous mitigation commitments commensurate with the extent of design changes in accordance with 23 CFR 771.109(b) and (d), 127(b), 129, and 130.

The remaining three factors enable FHWA to take into account any substantial problem with any of the alternatives remaining under consideration on issues beyond Section 4(f). These factors are:

(5) The degree to which each alternative meets the purpose and need for the project;

(6) After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and

(7) Substantial differences in costs among the alternatives.

By balancing the seven factors, four of which concern the degree of harm to Section 4(f) properties, FHWA will be able to consider all relevant concerns to determine which alternative would cause the least overall harm in light of the statue's preservation purpose. The least overall harm balancing test is set forth in 774.3(c)(1). This allows FHWA to fulfill its statutory mandate to make project decisions in the best overall public interest required by 23 U.S.C. 109(h). Through this balancing of factors, FHWA may determine that a serious problem identified in factors (v) through (vii) outweighs relatively minor net harm to a Section 4(f) property. The least overall harm determination also provides FHWA with a way to compare and select between alternatives that would use different types of Section 4(f) properties when competing assessments of significance and harm are provided by the officials with jurisdiction over the impacted properties. In evaluating the degree of harm to Section 4(f) properties, FHWA is required by the regulations to consider the views (if any) expressed by the official(s) with jurisdiction over each Section 4(f) property. If an official with jurisdiction states that all resources within that official's jurisdiction are of equal value, FHWA may still determine that the resources have different value if such a determination is supported by information in the project file. Also, if the officials with jurisdiction over two different properties provide conflicting assessments of the relative value of those properties, FHWA should consider the officials' views but then make its own independent judgment about the relative value of those properties. Similarly, if the official(s) with jurisdiction decline to provide any input at all regarding the relative value of the affected properties, FHWA should make its own independent judgment about the relative value of those properties.

FHWA is required to explain how the seven factors were compared to determine the least overall harm alternative (*See* 23 CFR 774.7(c)). The draft Section 4(f) evaluation will disclose the various impacts to the different Section 4(f) properties thereby initiating the balancing process. It should also disclose the relative differences among alternatives regarding non-Section 4(f) issues such as the extent to which each alternative meets the project purpose and need. The disclosure of impacts should include both objective, quantifiable impacts and qualitative measures that provide a more subjective assessment of harm. Preliminary assessment of how the alternatives compare to one another may also be included. After circulation of the draft Section 4(f) evaluation in accordance with 23 CFR 774.5(a), FHWA will consider comments received on the evaluation and finalize the comparison of all factors listed in 23 CFR 774.3(c)(1) for all the alternatives. The analysis and identification of the alternative that has the overall least harm must be documented in the final Section 4(f) evaluation (*See* 23 CFR 774.7(c)). In especially complicated projects, the final approval to use the Section 4(f) property may be made in the decision document (ROD or FONSI).

3.4 Examples of Section 4(f) Approvals

The table below describes five project alternative scenarios. In each project

scenario various alternatives are considered and there are various options available to approve the use of the Section 4(f) property needed for the project. The examples illustrate the approval options as well as the point that in some situations FHWA may only approve a certain alternative. These examples are not intended to address every possible scenario.

In Project 1 there is a single build alternative A, for which FHWA determines the use to be a *de minimis* impact and therefore does not require an individual Section 4(f) evaluation. Once the coordination required by 23 CFR 774.5(b) is completed, FHWA may approve the *de minimis* impact and the applicant may proceed with the build alternative.

Project 2 has two alternatives. The FHWA determines that alternative A has a *de minimis* impact on one Section 4(f) property, and alternative B has a *de minimis* impact on three Section 4(f) properties. Upon completion of the coordination required by 23 CFR 774.5(b), FHWA may approve either alternative under Section 4(f). As in the previous example, an individual Section 4(f) evaluation is not required, therefore the feasibility and prudence of avoiding Section 4(f) properties does not have to be determined. Furthermore, when there are only *de minimis* impacts, even among multiple alternatives, a least harm analysis is not necessary and there is no need to compare the significance of the competing Section 4(f) properties. The process to choose between alternatives A or B in the second example may be based on non-Section 4(f) considerations as determined appropriate through the project development process.

In Project 3, there are three alternatives under consideration. The FHWA determines that alternative A meets the criteria of a *de minimis* impact, while alternative B has a minor impact on a Section 4(f) property for which the programmatic Section 4(f) evaluation for minor uses is applicable. Alternative C would use a Section 4(f) property to an extent that a *de minimis* impact determination is not possible and no programmatic Section 4(f) evaluation applies. In this example, all three alternatives use a Section 4(f) property and thus none can be considered to be an avoidance alternative. For this project, alternative A may proceed immediately once the coordination required by 23 CFR 774.5 is complete, through an approved *de minimis* impact determination. Alternative B may be approved by following the procedures designated in the applicable programmatic Section 4(f) evaluation, whose end result demonstrates no feasible and prudent avoidance alternative. However, in this example if the applicant favors alternative C, then an individual Section 4(f) evaluation can be prepared to consider whether or not alternative C can be approved under Section 4(f). The individual Section 4(f) evaluation first determines that there is no feasible and prudent avoidance alternative as defined in 23 CFR 774.17. The evaluation then considers which alternative (A, B, or C) has the least overall harm using the factors in 23 CFR 774.3(c). Alternative C could only be approved if it is identified as having the least overall harm, which would be possible; for example, if alternatives A and B both have severe impacts to an important non-Section 4(f) resource and the impacts of alternative C can be adequately mitigated. In that case, upon completion of the coordination required by 23 CFR 775.5(a) and all possible planning to minimize harm as defined in 23 CFR 774.17, alternative C could be approved.

Project 4 differs slightly in having multiple *de minimis* impacts to Section 4(f) properties with alternative A, and a mix of *de minimis* impacts and greater than *de minimis* impacts not covered by a programmatic section 4(f) evaluation with alternative B. If alternative A is chosen, FHWA would satisfy Section 4(f) by making a *de minimis* impact determination for each property used in accordance with 23 CFR 774.3(b), 774.5(b), and 774.7(c). To consider selecting alternative B, an individual Section 4(f) evaluation would be prepared in accordance with 23 CFR 774.3(a), 774.5(a), and 774.7(a); however, a determination of *de minimis* impact for a specific Section 4(f) property can be made without considering avoidance alternatives for that property, even if that use occurs as part of an alternative that also includes other uses that are greater than *de minimis.* In this example, an additional alternative C is developed as part of the Section 4(f) evaluation. Alternative C avoids using any Section 4(f) property, and the evaluation then determines, using the definition in 23 CFR 774.17, that alternative C is feasible and prudent. Alternative C may proceed immediately because it does not use any Section 4(f) property and no Section 4(f) approval is needed. In this example, since alternative C is a feasible and prudent avoidance alternative the FHWA may not approve alternative B, although alternative A would still be available for selection because its impacts on Section 4(f) properties are *de minimis.* However, if the facts are changed and we now assume that the evaluation of avoidance alternative C had found that it was not feasible and prudent, then the Section 4(f) evaluation could be completed. The evaluation would determine the least overall harm amongst alternatives A and B using the factors in 23 CFR 774.3(c). (In this variation of the example, the least overall harm determination does not include alternative C in the comparison because alternative C was previously eliminated when it was found not to be feasible and prudent.) Alternative B could only be approved if it is identified as having the least overall harm. This would be possible, for example if alternative A would not meet the project purpose and need as well as alternative B, alternative A would be substantially more expensive, and the Section 4(f) property used by alternative B has no unusual significance and could be adequately mitigated. In that example, upon completion of the coordination required by 23 CFR 774.5(a) and all possible planning to minimize harm as defined in 23 CFR 774.17, alternative B could be approved even though it uses Section 4(f) property.

Project 5 has two alternatives, both having greater than *de minimis* impacts on a different Section 4(f) property. To choose among alternatives A and B, an individual Section 4(f) evaluation must be prepared in accordance with 23 CFR 774.3(a), 774.5(a), and 774.7(a) that demonstrates no feasible and prudent avoidance alternative exists, and a least overall harm analysis must be completed using the factors in 23 CFR 774.3(c). The alternative identified as having the least overall harm may proceed upon completion of the coordination required by 23 CFR 774.5(a) and all possible planning to minimize harm as defined in 23 CFR 774.17.

TABLE 1—PROJECT ALTERNATIVE SCENARIOS

Alternative	Use of Section 4(f) property	Individual Section 4(f) evaluation?	Outcome
Project 1, alternative A	*De minimis* impact	Not necessary	May proceed with A.
Project 2, alternative A	*De minimis* impact on one property.	Not necessary	May proceed with A or B; Section 4(f) is not determinative.
Project 2, alternative B	*De minimis* impact on three properties.	Not necessary.	
Project 3, alternative A	*De minimis* impact	Not necessary	May proceed with A or B; Section 4(f) is not determinative.
Project 3, alternative B	Minor use, programmatic Section 4(f) evaluation is applicable.	Not necessary.	
Project 3, alternative C	Greater than *de minimis* impact	Necessary. If no feasible and prudent avoidance alternative is identified, then a least overall harm analysis would compare A, B, and C.	May proceed with C only if C has less overall harm than A or B.
Project 4, alternative A	*De minimis* impact on two properties.	Not necessary	May proceed with A.
Project 4, alternative B	*De minimis* impact on one property & greater than *de minimis* impact on another property.	Necessary. As part of the evaluation, a new Alternative C is developed that avoids using Section 4(f) property.	If C is found feasible and prudent, cannot proceed with B. If C is not feasible and prudent, may proceed with B only if B has less overall harm than A.
Project 4, alternative C	None	Not necessary to complete the Section 4(f) evaluation to proceed with C.	May proceed with C; no Section 4(f) approval is required.
Project 5, alternative A	Greater than *de minimis* impact	Necessary. The evaluation must seek to identify feasible and prudent avoidance alternatives. Assuming none are found, then a least harm analysis will compare A and B.	Least overall harm analysis determines which alternative, A or B, may proceed.
Project 5, alternative B	Greater than *de minimis* impact.		

3.5 All Possible Planning To Minimize Harm

After determining that there are no feasible and prudent alternatives to avoid the use of Section 4(f) property, the project approval process for an individual Section 4(f) evaluation requires the consideration and documentation of all possible planning to minimize harm to Section 4(f) property (*See* 23 CFR 774.3(a)(2)). *All possible planning,* defined in 23 CFR 774.17, means that all reasonable measures identified in the Section 4(f) evaluation to minimize harm or mitigate for adverse impacts and effects must be included in the project. All possible planning to minimize harm does not require analysis of feasible and prudent avoidance alternatives, since such analysis will have already occurred in the context of searching for feasible and prudent alternatives that avoid Section 4(f) properties altogether under § 774.3(a)(1).

Minimization of harm may entail both alternative design modifications that reduce the amount of Section 4(f) property used and mitigation measures that compensate for residual impacts. Minimization and mitigation measures should be determined through consultation with the official(s) with jurisdiction. These include the SHPO and/or THPO for historic properties or officials owning or administering the resource for other types of Section 4(f) properties. Mitigation measures involving public parks, recreation areas, or wildlife or waterfowl refuges may involve a replacement of land and/or facilities of comparable value and function, or monetary compensation to enhance the remaining land. Neither the Section 4(f) statute nor regulations requires the replacement of Section 4(f) property used for highway projects, but this option may be the most straightforward means of minimizing harm to parks, recreation areas, and wildlife waterfowl refuges and is permitted under 23 CFR 710.509 as a mitigation measure for direct project impacts.

Mitigation of historic sites usually consists of those measures necessary to preserve the historic integrity of the site and agreed to in accordance with 36 CFR 800 by FHWA, the SHPO or THPO, and other consulting parties. In any case, the cost of mitigation should be a reasonable public expenditure in light of the severity of the impact on the Section 4(f) property in accordance with 23 CFR 771.105(d). Additional laws such as Section 6(f) of the Land and Water Conservation Fund Act may have separate mitigation and approval requirements and compliance with such requirements should also be described within the Section 4(f) discussion of all possible planning to minimize harm.

4.0 Documentation

U.S. DOT departmental requirements for documenting Section 4(f) analysis and approvals (DOT Order 5610.1C) have been incorporated into FHWA regulations, guidance and policy. The FHWA's procedures regarding the preparation and circulation of Section 4(f) documents is contained in 23 CFR 774.5 and FHWA's Technical Advisory, T 6640.8A, Guidance for Preparing and Processing of Environmental and Section 4(f) Documents.[10]

The documentation of all Section 4(f) determinations, consultations, coordination and approvals is intended to establish a record of FHWA's compliance with the regulatory process. Documentation also provides evidence that the substantive requirements have been met. Section 4(f) documentation and processing requirements vary depending on the type of Section 4(f)

[10] These and other resources are available at the FHWA Environmental Toolkit *http://environment.fhwa.dot.gov/index.asp.*

property used and whether or not the use meets the criteria of a *de minimis* impact. However, all situations which involve Section 4(f) property will necessitate some degree of documentation: either in the NEPA document, a Section 4(f) evaluation, or the project file.

The project file is the agency's written record that memorializes the basis for determining that an impact is *de minimis* or that there is no feasible and prudent avoidance alternative to the use of the Section 4(f) property and that FHWA undertook all possible planning to minimize harm to Section 4(f) property. When the agency determines that Section 4(f) is not applicable to a particular resource, written documentation of that decision should be maintained as part of the project file. The project file should include all relevant correspondence which may include emails and other electronic information that is applicable to the decision-making process. The project file should generally be retained until three years after FHWA reimbursement on Federal-aid projects and three years after final payment on non-Federal aid projects (See FHWA Order M.1324.1A, 49 CFR 18.42, and 49 CFR 19.53).

De Minimis Impact Determinations

The *de minimis* impact determination must include sufficient supporting documentation to demonstrate that the impacts, after avoidance, minimization, mitigation, or enhancement measures are taken into account, are *de minimis* as defined in 23 CFR 774.17; and that the coordination required by 23 CFR 774.5(b) was completed.

Information related to the *de minimis* impact determination should be included in the project NEPA document (EA or EIS), or in the project file for a project processed as a CE (*See* 23 CFR 774.7(c)). Circulation of this information in the project NEPA document may satisfy the public involvement requirements required for *de minimis* impact findings. For projects which include both *de minimis* impacts and use of Section 4(f) property with more than a *de minimis* impact, the determination and supporting data should be included in a separate section of the Section 4(f) evaluation.

Applying Programmatic Section 4(f) Evaluations

Information related to an approval to use Section 4(f) property by applying a programmatic Section 4(f) evaluation should be included in the project NEPA document (EA or EIS), or in the project file for a project processed as a CE. For projects which include both a programmatic Section 4(f) approval and a use of Section 4(f) property for which there is more than a *de minimis* impact, information regarding the application of the programmatic Section 4(f) evaluation should be included in a separate section of the Section 4(f) evaluation.

The project file should include sufficient supporting documentation to demonstrate that the programmatic evaluation being relied upon applies to the use of the specific Section 4(f) property. In addition, the project file should include documentation that the coordination required by the applicable programmatic evaluation was completed and that all specific conditions of the applicable programmatic evaluation were met.

Individual Section 4(f) Evaluations

Individual Section 4(f) evaluations must include sufficient analysis and supporting documentation to demonstrate that there is no feasible and prudent avoidance alternative and shall summarize the results of all possible planning to minimize harm (23 CFR 774.7(a)). For projects requiring a least overall harm analysis under 23 CFR 774.3(c), that analysis must be included within the individual Section 4(f) evaluation (23 CFR 774.7(c)).

Individual Section 4(f) evaluations are processed in two distinct stages: draft and final. Draft evaluations must be circulated to the U.S. DOI and shared with the official(s) with jurisdiction. The public may review and comment on a draft evaluation during the NEPA process. When a project is processed as a CE the Section 4(f) evaluation must be circulated independently to the U.S. DOI. In all cases, final Section 4(f) evaluations are subject to FHWA legal sufficiency review prior to approval (23 CFR 774.5(d)).

Project Files

In general, the project file should contain the following essential information, with analysis, regarding Section 4(f):

- When making *de minimis* impact determinations
  - (1) Applicability or non-applicability of Section 4(f) to the park, recreation, refuge or historic property proposed to be used by the project;
  - (2) Whether or not there is a use of section 4(f) property;
  - (3) Records of public involvement, or Section 106 consultation;
  - (4) Results of coordination with the officials with jurisdiction;
  - (5) Comments submitted during the coordination procedures required by 23 CFR 774.5 and responses to the comments; and
  - (6) Avoidance, minimization or mitigation measures that were relied upon to make the *de minimis* impact finding.
- When applying programmatic Section 4(f) evaluations
  - (1) Applicability or non-applicability of Section 4(f) to the park, recreation, refuge or historic property proposed to be used by the project;
  - (2) Whether or not there is a use of section 4(f) property;
  - (3) Records of public involvement, if any;
  - (4) Results of coordination with the officials with jurisdiction; and
  - (5) Documentation of the specific requirements of the programmatic evaluation that is being applied.
- When preparing an individual Section 4(f) evaluation
  - (1) Applicability or non-applicability of Section 4(f) to the park, recreation, refuge or historic property proposed to be used by the project;
  - (2) Whether or not there is a use of Section 4(f) property;
  - (3) Activities, features, and attributes of the Section 4(f) property;
  - (4) Analysis of the impacts to the Section 4(f) property;
  - (5) Records of public involvement;
  - (6) Results of coordination with the officials with jurisdiction;
  - (7) Alternatives considered to avoid using the Section 4(f) property, including analysis of the impacts caused by avoiding the Section 4(f) property;
  - (8) A least overall harm analysis, if appropriate;
  - (9) All measures undertaken to minimize harm to the Section 4(f) property;
  - (10) Comments submitted during the coordination procedures required by 23 CFR 774.5 and responses to the comments; and
  - (11) Results of the internal legal sufficiency review.

Administrative Records

If a Section 4(f) approval is legally challenged, the project file will be the basis of the administrative record that must be filed in the court for review. The administrative record will be reviewed in accordance with the *Administrative Procedure Act* (APA), (5 U.S.C. 706 (2)(A)), which provides judicial deference to U.S. DOT actions. Under the APA, the agency's action must be upheld unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

The court will review the administrative record to determine whether FHWA complied with the essential elements of Section 4(f). If an inadequate administrative record is prepared, the court will lack the required Section 4(f) documentation to review and, therefore, will be unable to defer to FHWA's decision, especially when a Section 4(f) evaluation was not required. While agency decisions are entitled to a presumption of regularity and the courts are not empowered to substitute their judgment for that of the agency, judges will carefully review whether FHWA followed the applicable requirements.

Part II—Questions and Answers Regarding Section 4(f) Applicability and Compliance

The following questions and answers are intended to provide additional and detailed guidance for complying with the requirements of Section 4(f). Examples to aid in determining the applicability of Section 4(f) to various types of property and project situations are included. These examples represent FHWA's policy regarding Section 4(f) compliance for situations most often encountered in the project development process. Since it is impossible to address every situation that could occur, it is recommended that the FHWA Division Office be consulted for advice and assistance in determining the applicability of Section 4(f) to specific circumstances not covered in this paper. The FHWA Division Offices are encouraged to consult with the Headquarters Office of Project Development and Environmental Review, the Resource Center Environment Technical Services Team and/or the Office of the Chief Counsel in cases where additional assistance in Section 4(f) matters is required.

Identification of Section 4(f) Properties

1. Public Parks, Recreation Areas and Wildlife and Waterfowl Refuges

Question 1A: When is publicly owned land considered to be a park, recreation area or wildlife and waterfowl refuge?

Answer: Publicly owned land is considered to be a park, recreation area or wildlife and waterfowl refuge when the land has been officially designated as such by a Federal, State or local agency, and the officials with jurisdiction over the land determine that its primary purpose is as a park, recreation area, or refuge. Primary purpose is related to a property's primary function and how it is intended to be managed. Incidental, secondary, occasional or dispersed activities similar to park, recreational or refuge activities do not constitute a primary purpose within the context of Section 4(f). Unauthorized activities, such as ad hoc trails created by the public within a conservation area, should not be considered as part of FHWA's determination of Section 4(f) applicability.

In addition, the statute itself requires that a property must be a significant public park, recreation area, or wildlife and waterfowl refuge. The term significant means that in comparing the availability and function of the park, recreation area or wildlife and waterfowl refuge, with the park, recreation or refuge objectives of the agency, community or authority, the property in question plays an important role in meeting those objectives. Except for certain multiple-use land holdings (Question 4), significance determinations are applicable to the entire property and not just to the portion of the property proposed for use by a project.

Significance determinations of publicly owned land considered to be a park, recreation area, or wildlife and waterfowl refuge are made by the official(s) with jurisdiction over the property. The meaning of the term significance, for purposes of Section 4(f), should be explained to the official(s) with jurisdiction if the official(s) are not familiar with Section 4(f). Management plans or other official forms of documentation regarding the land, if available and up-to-date, are important and should be obtained from the official(s) and retained in the project file. If a determination from the official(s) with jurisdiction cannot be obtained, and a management plan is not available or does not address the significance of the property, the property will be presumed to be significant. However, all determinations, whether stated or presumed, and whether confirming or denying significance of a property for the purposes of Section 4(f), are subject to review by FHWA for reasonableness pursuant to 23 CFR 774.11. When FHWA changes a determination of significance, the basis for this determination will be included in the project file and discussed in the environmental documentation for the proposed action.

Question 1B: Can an easement or other encumbrance on private property result in that property being subject to Section 4(f)?

Answer: Yes, in certain instances. Generally, an easement is the right to use real property without possessing it, entitling the easement holder to the privilege of some specific and limited use of the land. Easements take many forms and are obtained for a variety of purposes by different parties. Easements or similar encumbrances restricting a property owner from making certain uses of his/her property, such as conservation easements, are commonly encountered during transportation project development. Easements such as these often exist for the purpose of preserving open space, protection of habitat, or to limit the extent and density of development in a particular area, and they may be held by Federal, State or local agencies or non-profit groups or other advocacy organizations.

Although a conservation easement may not meet all of the requirements necessary to treat the property as a significant publicly-owned public park, recreation area, or wildlife and waterfowl refuge, it is a possibility that mandates careful case-by-case consideration when encountered. The terms of the easement should be carefully examined to determine if Section 4(f) applies to the property. Factors to consider include, but are not limited to, the views of the official(s) with jurisdiction, the purpose of the easement, the term of the easement, degree of public access to the property, how the property is to be managed and by whom, what parties obtained the easement (public agency or non-public group), termination clauses, and what restrictions the easement places on the property owner's use of the easement area. Questions on whether or not an easement conveys Section 4(f) status to a property should be referred to the FHWA Division Office and, if necessary, the Division Office should consult with the Headquarters Office of Project Development and Environmental Review, the Headquarters Office of Real Estate Services, the Resource Center Environment Technical Service Team, or the Office of Chief Counsel.

Easements and deed restrictions for the purpose of historic preservation are also commonly encountered during transportation project development. Section 4(f) applicability questions are unlikely to be encountered for these properties because if the property is not on or eligible for the NR Section 4(f) does not apply, notwithstanding the preservation easement. If the property is on or eligible for the NR, Section 4(f) applies. However, the existence and nature of such easements should be documented and considered as necessary within the feasible and prudent analysis and least harm analysis if a Section 4(f) evaluation is prepared.

Question 1C: When does a lease agreement with a governmental body constitute public ownership?

Answer: In some instances, a lease agreement between a private landowner and a governmental body may constitute a proprietary interest in the land for purposes of Section 4(f). Generally, under a long term lease to a governmental body, such land may be considered to be ''publicly owned'' land and if the property is being managed by the governmental body as a significant public park, recreation area, or wildlife and waterfowl refuge then a use of the property will be subject to the requirements of Section 4(f). Such lease agreements should be examined on a case-by-case basis with consideration of such factors as the term of the lease, the understanding of the parties to the lease, the existence of a cancellation clause, and how long the lease has been in place. Questions on whether or not the leasehold constitutes public ownership should be referred to the FHWA Division Office, and if necessary the Division Office should consult with the Headquarters Office of Project Development and Environmental Review, the Resource Center Environment Technical Service Team, or the Office of Chief Counsel. If FHWA determines that the lease agreement creates a proprietary interest that is equivalent to public ownership, FHWA must then determine whether the property is in fact being managed by the government body as a significant public park, recreation area, or wildlife and waterfowl refuge. If so, the property is subject to Section 4(f).

Question 1D: Are significant publicly owned parks and recreation areas that are not open to the general public subject to the requirements of Section 4(f)?

Answer: The requirements of Section 4(f) would apply if the entire public park or public recreation area permits visitation of the general public at any time during the normal operating hours. Section 4(f) would not apply when visitation is permitted to a select group only and not to the entire public. Examples of select groups include residents of a public housing project; military service members and their dependents; students of a public school; and students, faculty, and alumni of a public college or university (*See* Question 18B). The FHWA does, however, strongly encourage the preservation of such parks and recreation areas even though they may not be open to the general public or are not publicly owned and therefore are not protected by Section 4(f).

It should be noted that wildlife and waterfowl refuges have not been included in this discussion. Many wildlife and waterfowl refuges allow public access, while others may restrict public access to certain areas within the refuge or during certain times or seasons of the year for the protection of refuge habitat or species. In these cases, the property should be examined by the FHWA Division Office to verify that the primary purpose of the property is for wildlife and waterfowl refuge activities and not for other non-Section 4(f) activities, and that the restrictions on public access are limited to measures necessary to protect refuge habitat or species. If it is determined that the primary purpose of the property is for wildlife and waterfowl refuge activities and that the restrictions on public access are limited to the measures necessary to protect the refuge habitat or species, then the property is subject to Section 4(f) notwithstanding the access restriction.

Question 1E: What is a wildlife and waterfowl refuge for purposes of Section 4(f)?

Answer: The term wildlife and waterfowl refuge is not defined in the Section 4(f) law. On the same day in 1966 that Section 4(f) was passed, Congress also passed the *National Wildlife Refuge System Administration Act* (Pub. L. 89–669, 80 Stat. 926) to provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes. The Refuge System referred to in that Act includes areas that were designated as wildlife refuges and waterfowl refuges.[11] FHWA has considered this contemporaneous legislation in our implementation of Section 4(f) regarding refuges. For purposes of Section 4(f), National Wildlife Refuges [12] are always considered wildlife and waterfowl refuges by FHWA in administering Section 4(f); therefore no individual determination of their Section 4(f) status is necessary. In addition, any significant publicly owned public property (including waters) where the primary purpose of such land is the conservation, restoration, or management of wildlife and waterfowl resources including, but not limited to, endangered species and their habitat is considered by FHWA to be a wildlife and waterfowl refuge for purposes of Section 4(f).

In determining the primary purpose of the land, consideration should be given to:

(1) The authority under which the land was acquired;

(2) Lands with special national or international designations;

(3) The management plan for the land; and,

(4) Whether the land has been officially designated, by a Federal, State, or local agency with jurisdiction over the land, as an area whose primary purpose and function is the conservation, restoration, or management of wildlife and waterfowl resources including, but not limited to, endangered species and their habitat.

Many refuge-type properties permit recreational activities that are generally considered not to conflict with species conservation, such as trails, wildlife observation and picnicking. Other activities, such as educational programs, hunting, and fishing, may also be allowed when the activity is consistent with the broader species conservation goals for the property.

Examples of properties that may function as wildlife and waterfowl refuges for purposes of Section 4(f) include: State or Federal wildlife management areas, a wildlife reserve, preserve or sanctuary; and waterfowl production areas including wetlands and uplands that are permanently set aside (in a form of public ownership) primarily for refuge purposes. The FHWA should consider the ownership, significance, function and primary purpose of such properties in determining if Section 4(f) will apply. In making the determination, the FHWA should review the existing management plan and consult with the Federal, State or local official(s) with jurisdiction over

[11] The *National Wildlife Refuge System* is currently comprised of the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas (16 U.S.C. 668dd(a)(1)).

[12] The DOI's regulations state: ''All national wildlife refuges are maintained for the primary purpose of developing a national program of wildlife and ecological conservation and rehabilitation. These refuges are established for the restoration, preservation, development and management of wildlife and wildlands habitat; for the protection and preservation of endangered or threatened species and their habitat; and for the management of wildlife and wildlands to obtain the maximum benefits from these resources'' (50 CFR 25.11(b)).

the property. In appropriate cases, these types of properties will be considered multiple-use public land holdings (*See* 23 CFR 774.11(d) and Question 4) and must be treated accordingly.

The U.S. DOI administers a variety of Federal grant programs in support of hunting, fishing, and related resource conservation. While the fact that a property owned by a State or local government has at some time in the past been the beneficiary of such a grant does not automatically confer Section 4(f) status, the existence and terms of such a prior grant, when known, should be considered along with the other aspects of the property described above when determining if the property should be treated as a wildlife and waterfowl refuge for purposes of Section 4(f). Finally, it should be noted that sites purchased as mitigation for transportation projects (e.g., for endangered species impacts) can be considered refuges for purposes of Section 4(f) if the mitigation sites meet all of the applicable criteria for Section 4(f) status as a refuge, including public ownership and access, significance, and functioning primarily as a refuge.

2. Historic Sites

Question 2A: How is Section 4(f) significance of historic sites determined?

Answer: *Historic site* is defined in 23 CFR 774.17. For purposes of Section 4(f), a historic site is significant only if it is on or eligible for the NR. Pursuant to the NHPA, FHWA in cooperation with the applicant consults with the SHPO and/or THPO, tribes that may attach religious and cultural significance to the property, and when appropriate, with local officials to determine whether a site is eligible for the NR. In case of disagreement between FHWA and the SHPO/THPO or if so requested by the ACHP, FHWA shall request a determination of eligibility from the Keeper of the NR (36 CFR 800.4(c)(2)). Any third party may also seek the involvement of the Keeper by asking the ACHP to request that the Federal agency seek a determination of eligibility.

If a site is determined not to be on or eligible for the NR, FHWA still may determine that the application of Section 4(f) is appropriate when an official (such as the Mayor, president of the local historic society, etc.) formally provides information to indicate that the historic site is of local significance. In rare cases such as this, FHWA *may* determine that it is appropriate to apply Section 4(f) to that property. In the event that Section 4(f) is found inapplicable, the FHWA Division Office should document the basis for not applying Section 4(f). Such documentation might include the reasons why the historic site was not eligible for the NR.

Question 2B: How does Section 4(f) apply in historic districts that are on or eligible for the NR?

Answer: Within a NR listed or eligible historic district, FHWA's long-standing policy is that Section 4(f) applies to those properties that are considered contributing to the eligibility of the historic district, as well as any individually eligible property within the district. Elements within the boundaries of a historic district are assumed to contribute, unless they are determined by FHWA in consultation with the SHPO/THPO not to contribute (*See also* Question 7C).

Question 2C: How should the boundaries of a property eligible for listing on the NR be determined where a boundary has not been established?

Answer: In this situation, FHWA makes the determination of a historic property's boundary under the regulations implementing Section 106 of the NHPA in consultation with the SHPO/THPO. The identification of historic properties and the determination of boundaries should be undertaken with the assistance of qualified professionals during the early stages of the NEPA process. This process should include the collection, evaluation and presentation of the information to document FHWA's determination of the property boundaries. The determination of eligibility, which would include boundaries of the site, rests with FHWA, but if the SHPO or THPO objects, or if the ACHP or the Secretary of the Interior so requests, then FHWA shall obtain a determination from the Keeper of the NR (36 CFR 800.4(c)(2)).

Selection of boundaries is a judgment based on the nature of the property's significance, integrity, setting and landscape features, functions and research value. Most boundary determinations will take into account the modern legal boundaries, historic boundaries (identified in tax maps, deeds, or plats), natural features, cultural features and the distribution of resources as determined by survey and testing for subsurface resources. Legal property boundaries often coincide with the proposed or eligible historic site boundaries, but not always and, therefore, should be individually reviewed for reasonableness. The type of property at issue, be it a historic building, structure, object, site or district and its location in either urban, suburban or rural areas, should include the consideration of various and differing factors set out in the *National Park Service Bulletin: Defining Boundaries for National Register Properties.*[13]

Question 2D: How do you reconcile the phased approach to identification and evaluation and treatment of historic properties under Section 106 of the NHPA with the timing for the completion of Section 4(f) requirements?

Answer: Compliance with Section 4(f) requires FHWA to carry out a reasonable level of effort to identify historic properties prior to issuing a Section 4(f) approval. The reasonableness of the level of effort depends upon the anticipated effects of the project and nature of likely historic resources present in the affected project area. Accordingly, the reasonable level of effort varies from project to project. While a visual survey may be necessary to identify above ground resources, it may be possible to rule out the likelihood for the presence of significant below ground resources based on literature review, prior studies of the area, consultation with consulting parties (e.g., Indian tribes) and factors that relate to archeological preservation such as soil and slope types. If a phased approach to identification and evaluation of historic properties is adopted pursuant to the Section 106 regulations, the methodology for that approach should be coordinated with FHWA to ensure that it will also satisfy Section 4(f) requirements.

You may be able to establish without carrying out a field survey that there is little or no potential for the presence of archeological resources that have value for preservation in place, and therefore are subject to Section 4(f). The project file should include documentation of the level of effort and justification for the conclusion that it is unlikely that there are additional unrecorded historic properties that could be subject to Section 4(f). A Memorandum of Agreement or project specific Programmatic Agreement focusing on a process for subsequent compliance should be executed prior to project approval. Those agreements may provide for the completion of additional identification and evaluation (e.g., archeological resource studies), assessment of effects, and refinement of

[13] *http://www.cr.nps.gov/nr/publications/bulletins/boundaries.*

mitigation measures after NEPA is approved.

Question 2E: How are National Historic Landmarks (NHL) treated under Section 4(f)?

Answer: Section 4(f) requirements related to the potential use of an NHL designated by the Secretary of Interior are essentially the same as they are for any historic property determined eligible under the Section 106 process, except that the July 5, 1983 *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* may not be relied upon to approve the use of a historic bridge that is an NHL.

Section 110(f) of the NHPA (16 U.S.C. 470–h–2) outlines the specific actions that an Agency must take when a NHL may be directly and adversely affected by an undertaking. Agencies must, ''to the maximum extent possible * * * minimize harm'' to the NHL affected by an undertaking. While not expressly stated in the Section 4(f) statute or regulations, the importance and significance of the NHL should be considered in the FHWA's Section 4(f) analysis of least overall harm pursuant to 23 CFR 774.3(c)(1)(iii). In addition, where there is a potential adverse effect to an NHL determined under the Section 106 process, the Secretary of Interior must be notified and given the option to participate in the Section 106 process. When the U.S. DOI has elected to participate, their representative (typically, the National Park Service) should be recognized as an additional official with jurisdiction and included in the required coordination in the course of the Section 4(f) process.

3. Archeological Resources

Question 3A: When does Section 4(f) apply to archeological sites?

Answer: Section 4(f) applies to archeological sites that are on or eligible for the NR and that warrant preservation in place, including those sites discovered during construction as discussed in Question 3B. Section 4(f) does not apply if FHWA determines, after consultation with the SHPO/THPO, federally recognized Indian tribes (as appropriate), and the ACHP (if participating) that the archeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed not to recover the resource) and has minimal value for preservation in place, and the SHPO/THPO and ACHP (if participating) does not object to this determination (*See* 23 CFR 774.13(b)). The destruction of a significant archaeological resource without first recovering the knowledge of the past inherent in that resource should not be taken lightly. Efforts to preserve the resource or develop and execute a data recovery plan should be addressed in the Section 106 process.

Question 3B: How are archeological sites discovered during construction of a project handled?

Answer: When archeological sites are discovered during construction (23 CFR 774.9(e) and 11(f)), FHWA must determine if an approval is necessary or if an exception applies under 23 CFR 774.13(c) (*See* Question 26). Where preservation in place is warranted and a Section 4(f) approval would be required, the Section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take into account the level of investment already made. The review process, including the consultation with other agencies should be shortened, as appropriate consistent with the process set forth in Section 106 of the NHPA regulations and should include Indian tribes that may attach religious and cultural significance to sites discovered (36 CFR 800.13). Discoveries may be addressed prior to construction in agreement documents that set forth procedures that plan for subsequent discoveries. When discoveries occur without prior planning, the Section 106 regulation calls for reasonable efforts to avoid, minimize, or mitigate such sites and provides an expedited timeframe for interested parties to reach resolution regarding treatment of the site. A decision to apply Section 4(f), based on the outcome of the Section 106 process, to an archeological discovery during construction would trigger an expedited Section 4(f) evaluation. Because the U.S. DOI has a responsibility to review individual Section 4(f) evaluations and is not usually a party to the Section 106 process, the U.S. DOI should be notified and any comments they provide considered within a shortened response period.

Question 3C: How do the Section 4(f) requirements apply to archaeological districts?≤

Answer: Section 4(f) requirements apply to archeological districts in the same way they apply in historic districts, but only where preservation in place is warranted. There would not be a Section 4(f) use if, after consultation with the SHPO/THPO, FHWA determines that the project would use only a part of the archaeological district which is considered a non-contributing element of that district or that the project occupies only a part of the district which is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. As with a historic district, if the project does not use any individual contributing element of the archeological district which is significant for preservation in place and FHWA determines that the project will result in an adverse effect, then FHWA must consider whether or not the proximity impacts will result in a constructive use in accordance with 23 CFR 774.15.

4. Public Multiple-Use Land Holdings

Question 4: Are multiple-use public land holdings (e.g., National Forests, State Forests, Bureau of Land Management lands) subject to the requirements of Section 4(f)?

Answer: When applying Section 4(f) to multiple-use public land holdings, FHWA must comply with 23 CFR 774.11(d). Section 4(f) applies only to those portions of a multiple-use public property that are designated by statute or identified in an official management plan of the administering agency as being primarily for public park, recreation, or wildlife and waterfowl refuge purposes, and are determined to be significant for such purposes. Section 4(f) will also apply to any historic sites within the multiple-use public property that are on or eligible for the NR. Multiple-use public land holdings are often vast in size, and by definition these properties are comprised of multiple areas that serve different purposes. Section 4(f) does not apply to those areas within a multiple-use public property that function primarily for any purpose other than significant park, recreation or refuge purposes. For example, within a National Forest, there can be areas that qualify as Section 4(f) resources (e.g. campgrounds, trails, picnic areas) while other areas of the property function primarily for purposes other than park, recreation or a refuge such as timber sales or mineral extraction. Coordination with the official(s) with jurisdiction and examination of the management plan for the area will be necessary to determine if Section 4(f) should apply to an area of a multiple-use property that would be used by a transportation project.

For multiple-use public land holdings which either do not have formal management plans or when the existing formal management plan is out-of-date, FHWA will examine how the property functions and how it is being managed to determine Section 4(f) applicability for the various areas of the property. This review will include coordination

with the official(s) with jurisdiction over the property.

5. Tribal Lands and Indian Reservations

Question 5: How are lands owned by Federally Recognized Tribes, and/or Indian Reservations treated for the purposes of Section 4(f)?

Answer: Federally recognized Indian Tribes are sovereign nations and the land owned by them is not considered publicly owned within the meaning of Section 4(f). Therefore, Section 4(f) does not automatically apply to tribal land. In situations where it is determined that the property or resource owned by a Tribal Government or within an Indian Reservation functions as a significant public park, recreational area, or wildlife and waterfowl refuge (which is open to the general public), or is eligible for the NR, the land would be considered Section 4(f) property.

6. Traditional Cultural Places (TCPs)

Question 6: Are lands that are considered to be traditional cultural places subject to the provisions of Section 4(f)?

Answer: A TCP is defined generally as land that may be eligible for inclusion in the NR because of its association with cultural practices or beliefs of a living community that; (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.[14] Land referred to as a TCP is not automatically considered historic property, or treated differently from other potentially historic property. A TCP must also meet the NR criteria as a site, structure, building, district, or object to be eligible under Section 106, and thus for Section 4(f) protection. For those TCPs of significance to an Indian tribe or Native Hawaiian Organization (NHO), the THPO or designated representative of the Indian tribe or NHO should be acknowledged as possessing special expertise to assess the NR eligibility of the resources that possess religious and cultural significance to them. TCPs may be eligible under multiple criteria and therefore should not be presumed to be eligible only as archeological resources (*See* 23 CFR 774.11(e)).

[14] For more information on the subject of TCPs see National Register Bulletin #38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties http://www.nps.gov/history/NR/publications/bulletins/nrb38/nrb38.pdf.*

Use of Section 4(f) Properties

7. Use of Section 4(f) Property

Question 7A: What constitutes a transportation use of property from publicly owned public parks, public recreation areas, wildlife and waterfowl refuges and public or privately owned historic sites?

Answer: A use of Section 4(f) property is defined in 23 CFR 774.17. A use occurs when:

(1) Land is *permanently incorporated* into a transportation facility;

(2) There is a *temporary occupancy* of land that is adverse in terms of the Section 4(f) statute's preservationist purposes; or

(3) There is a *constructive use* of a Section 4(f) property.

Permanent Incorporation: Land is considered permanently incorporated into a transportation project when it has been purchased as right-of-way or sufficient property interests have otherwise been acquired for the purpose of project implementation. For example, a permanent easement required for the purpose of project construction or that grants a future right of access onto a Section 4(f) property, such as for the purpose of routine maintenance by the transportation agency, would be considered a permanent incorporation of land into a transportation facility.

Temporary Occupancy: Examples of temporary occupancy of Section 4(f) land include right-of-entry, project construction, a temporary easement, or other short-term arrangement involving a Section 4(f) property. A temporary occupancy will not constitute a Section 4(f) use when all of the conditions listed in 23 CFR 774.13(d) are satisfied:

(1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

In situations where the above criteria cannot be met, the temporary occupancy will be a use of Section 4(f) property and the appropriate Section 4(f) analysis, coordination, and documentation will be required (*See* 23 CFR 774.13(d)). In those cases where a temporary occupancy constitutes a use of Section 4(f) property and the *de minimis* impact criteria (Questions 10 and 11) are also met, a *de minimis* impact finding may be made. *De minimis* impact findings should not be made in temporary occupancy situations that do not constitute a use of Section 4(f) property.

Constructive Use: FHWA must comply with 23 CFR 774.15 to determine whether or not there is a constructive use of Section 4(f) property. Constructive use of Section 4(f) property is only possible in the absence of a permanent incorporation of land or a temporary occupancy of the type that constitutes a Section 4(f) use. Constructive use occurs when the proximity impacts of a project on an adjacent or near-by Section 4(f) property, after incorporation of impact mitigation, are so severe that the activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs when the protected activities, features, or attributes of the Section 4(f) property are substantially diminished. As a general matter this means that the value of the resource, in terms of its Section 4(f) purpose and significance (Questions 1 and 2), will be meaningfully reduced or lost. The degree of impact and impairment must be determined in consultation with the officials with jurisdiction in accordance with 23 CFR 774.15(d)(3). In those situations where a potential constructive use can be reduced below a substantial impairment by the inclusion of mitigation measures, there will be no constructive use and Section 4(f) will not apply.

The Section 4(f) regulations identify specific project situations where constructive use would and would not occur. The impacts of projects adjacent to or in reasonable proximity of Section 4(f) property should be carefully examined early in the NEPA process pursuant to 23 CFR Part 771. If it is determined that the proximity impacts do not cause a substantial impairment, FHWA can reasonably conclude that there will be no constructive use. The analysis of proximity impacts and potential constructive use should be documented in the project file. Documentation of a finding of *no constructive use* should apply the legal

standards and terminology used in 23 CFR 774.15, *Constructive Use Determinations.* The use of the term ''constructive use'' is not required in such documentation, but should be used when appropriate—for example, when responding to comments in NEPA documents that specifically address constructive use, or where it is useful in demonstrating that FHWA has specifically considered the potential for a constructive use. Where a constructive use determination seems likely, the FHWA Division Office is required by the Administrator's delegation of Section 4(f) authority to consult with the Headquarters Office of Project Development and Environmental Review before the determination is finalized.

Since a *de minimis* impact finding can only be made where the transportation use does not adversely affect the activities, features, or attributes that qualify a property for protection under Section 4(f), a *de minimis* impact finding is inappropriate where a project results in a constructive use (*See* 23 CFR 774.3(b) and the definition of *de minimis* impact in 774.17).

Question 7B: Does Section 4(f) apply when there is an adverse effect determination under the regulations implementing Section 106 of the NHPA?

Answer: FHWA's determination of adverse effect under the Section 106 process (*See* 36 CFR 800.5) does not automatically mean that Section 4(f) will apply. Nor does a determination of no adverse effect mean that Section 4(f) will not apply in some cases. When a project permanently incorporates land of a historic site, regardless of the Section 106 determination, Section 4(f) will apply. If a project does not permanently incorporate land from the historic property but results in an adverse effect, it will be necessary for FHWA to further assess the proximity impacts of the project in terms of the potential for constructive use (Question 7A). This analysis is necessary to determine if the proximity impact(s) substantially impair the features or attributes that contribute to the NR eligibility of the historic site. If there is no substantial impairment, notwithstanding an adverse effect determination, there is no constructive use and Section 4(f) does not apply. The FHWA determines if there is a substantial impairment by consulting with all identified officials with jurisdiction, including the SHPO/THPO and the ACHP if participating, to identify the activities, features, and attributes of the property that qualify it for Section 4(f) protection and by analyzing the proximity impacts of the project (including any mitigation) on those activities, features, and attributes (*See* 23 CFR 774.15(d)(3)). The determination of Section 4(f) applicability is ultimately FHWA's decision, and the considerations and consultation that went into that decision should be documented in the project file.

An example of a situation in which there is a Section 106 adverse effect but no Section 4(f) use, is a proposed transportation enhancement project that would convert a historic railroad depot into a tourist center. For public use, the project will require consistency with the American with Disabilities Act (ADA). The incorporation of accessible ramps or elevator may result in a determination of adverse effect; however, there is no permanent incorporation of Section 4(f) land into a transportation facility. The FHWA may determine, after consultation with the SHPO/THPO on the historic attributes and impacts thereto, that the project will not substantially impair the attributes of the historic property. There would not be a Section 4(f) use in this case. There would be a Section 4(f) use only if land from the property is either incorporated into a transportation facility or if the property is substantially impaired.

Another example of an adverse effect where there is no Section 4(f) use might be construction of a new highway within the immediate view shed of a historic farmstead that results in an adverse effect finding under Section 106 for the diminishment of the setting. It is unlikely this visual intrusion would reach the threshold of substantial impairment of the attributes which cause the farmstead to be eligible for the NR as it would still retain its historic fabric and use features; however, a constructive use could occur where the proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property.

An example of a Section 4(f) use without a Section 106 adverse effect involves a project on existing alignment, which proposes minor modification at an intersection. To widen the roadway sufficiently a small amount of land from an adjacent historic site will be acquired. The land acquisition does not alter the integrity of the historic site and the SHPO concurs in FHWA's determination of no adverse effect. Even though under Section 106 there is no adverse effect, land from the site will be permanently incorporated into the transportation facility and Section 4(f) will apply. The use would likely qualify as a *de minimis* impact or may be approved using the *Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites*[15] depending on the circumstances of the project.

Question 7C: How is a Section 4(f) use determined in historic districts?

Answer: When a project requires land from a non-historic or non-contributing property lying within a historic district and does not use other land within the historic district that is considered contributing to its historic significance, FHWA's longstanding policy is that there is no direct use of the historic district for purposes of Section 4(f). With respect to constructive use, if the Section 106 consultation results in a determination of no historic properties affected or no adverse effect, there is no Section 4(f) constructive use of the district as a whole. If the project requires land from a non-historic or non-contributing property, and the Section 106 consultation results in a determination of adverse effect to the district as a whole, further assessment is required pursuant to 23 CFR 774.15 to determine whether or not there will be a constructive use of the district. If the use of a non-historic property or non-contributing element substantially impairs the activities, features, or attributes that are related to the NR eligibility of the historic district, then Section 4(f) would apply. In any case, appropriate steps, including consultation with the SHPO/THPO on the historic attributes of the district and impacts thereto, should be taken to establish whether the property is contributing or non-contributing to the district and whether its use would substantially impair the historic attributes of the historic district.

For example, an intersection improvement proposed in a NR listed or eligible historic district, requires the demolition of a modern building that is neither individually eligible for the NR nor is a contributing element of the district. Although no right-of-way will be acquired from an individually eligible or contributing property, it is consistent with the NHPA regulations that there will be an adverse effect to the historic district because of changes resulting from the wider intersection

[15] *http://www.environment.fhwa.dot.gov/projdev/pd5sec4f.asp.*

and installation of more extensive traffic signals. It may be reasonably determined, however, that no individually eligible property, contributing element, or the historic district as a whole will be substantially impaired. Accordingly, in this example a Section 4(f) use will not occur in the form of either a permanent incorporation or a constructive use.

When a project uses land from an individually eligible property within a historic district, or a property that is a contributing element to the historic district, Section 4(f) is applicable. In instances where a determination is made under Section 106 of no historic properties affected or no adverse effect, then the use may be approved with a *de minimis* impact determination. If the use does not qualify for a *de minimis* impact determination, an individual Section 4(f) evaluation will be necessary. Exceptions recognized in 23 CFR 774.13 may be applied to individually eligible or contributing properties within a historic district, and to contributing elements within a historic district.

Question 7D: How are historic resources within highway rights-of-way considered?

Answer: In some parts of the country it is not uncommon for historic objects or features not associated with the roadway to exist within the highway right-of-way. Examples include rock walls, fences, and structures that are associated with an adjacent historic property. Others are linear properties such as drainage systems or railroad corridors. These properties, objects, or features are either not transportation in nature or are part of the roadway itself. This condition occurs for various reasons such as historic property boundaries coinciding with the roadway centerline or edge of the road, or situations where right-of-way was acquired but historic features were allowed to remain in place. When a future transportation project is advanced resulting in a Section 106 determination of no historic properties affected or no adverse effect to such resources, there would be no Section 4(f) use. If the historic features are determined to be adversely affected, the adverse effect should be evaluated to determine whether it results in a Section 4(f) use.

8. Historic Bridges, Highways and Other Transportation Facilities

Question 8A: How does Section 4(f) apply to historic transportation facilities?

Answer: The Section 4(f) statute imposes conditions on the use of land from historic sites for highway projects but makes no mention of bridges, highways, or other types of facilities such as railroad stations or terminal buildings, which may be historic and are already serving as transportation facilities. The FHWA's interpretation is that the Congress clearly did not intend to restrict the rehabilitation or repair, of historic transportation facilities. The FHWA therefore established a regulatory provision that Section 4(f) approval is required only when a historic bridge, highway, railroad, or other transportation facility is adversely affected by the proposed project; e.g. the historic integrity (for which the facility was determined eligible for the NR) is adversely affected by the proposed project (*See* 23 CFR 774.13(a)).

Question 8B: Will Section 4(f) apply to the replacement of a historic bridge that is left in place?

Answer: FHWA's longstanding policy is that Section 4(f) does not apply to the replacement of a historic bridge on new location when the historic bridge is left in its original location and its historic integrity and value will be maintained. To maintain the integrity of the historic bridge, FHWA should ensure that a mechanism is in place for continued maintenance of the bridge that would avoid harm to the bridge due to neglect. In these situations it is also necessary to consider whether or not the proximity impacts of the new bridge will result in substantial impairment of the historic bridge that is left in place or whether there are other properties present which should be afforded consideration pursuant to Section 4(f). These considerations should be documented in the project file.

Question 8C: How do the requirements of Section 4(f) apply to donations of historic bridges to a State, locality, or responsible private entity?

Answer: A State DOT or local public agency that proposes to demolish a historic bridge for a replacement project may first make the bridge available for donation to a State, locality or a responsible private entity. This process is commonly known as marketing the historic bridge and often involves relocation of the structure, if the bridge is of a type suitable for relocation. Provided the State, locality or responsible entity that accepts the bridge enters into an agreement to maintain the bridge and the features that contribute to its historic significance and assume all future legal and financial responsibility for the bridge, Section 4(f) will not apply to the bridge.

If the bridge marketing effort is unsuccessful and the bridge will be demolished or relocated without preservation commitments, Section 4(f) will apply and the appropriate Section 4(f) analysis, consultation and documentation will be required. The *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* [16] may be used.

Question 8D: Can the *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* be applied to the replacement of a historic bridge or culvert that lacks individual distinction but is identified as a contributing element of a historic district that is on or eligible for listing on the NR?

Answer: Historic districts may include properties or elements that lack individual distinction but possess sufficient integrity to contribute to the overall significance of the district, as well as individually distinctive features that may be separately listed or determined eligible for the NR. All contributing properties or elements, including identified features and their settings are considered eligible for the NR and are therefore Section 4(f) resources. As such, bridges in historic districts may be individually eligible but may also be identified as contributing features within the larger historic district. The *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* [17] may be applied to any historic bridge or culvert, either contributing to a district or individually eligible. The application of the historic bridge programmatic Section 4(f) evaluation would be limited to the bridge replacement or rehabilitation only and must meet all the applicability criteria stated in the programmatic Section 4(f) evaluation. If the bridge replacement requires use, either direct or constructive, of surrounding or adjoining property that contributes to the significance of the historic district, the use of that property would have to be evaluated via another form of Section 4(f) evaluation,

[16] The Section 4(f) programmatic evaluations are available at *http://www.environment.fhwa.dot.gov/4f/index.asp.*

[17] The Section 4(f) programmatic evaluations are available at *http://www.environment.fhwa.dot.gov/.*

including possibly an individual evaluation.

Question 8E: Does Section 4(f) apply to the construction of an access ramp providing direct vehicular ingress/egress to a public boat launch area from an adjacent highway?

Answer: When an access ramp is constructed as part of a project to construct a new bridge or to reconstruct, replace, repair, or alter an existing bridge on a Federal-aid system, FHWA's longstanding policy is that Section 4(f) approval is not necessary for the access ramp and public boat launching area. This policy was jointly developed by FHWA and the U.S. DOI in response to the enactment of section 147 of the *Federal-Aid Highways Act of 1976* (Pub. L. 94–280 (HR 8235) May 5, 1976). Where public boat launching areas are located in publicly owned parks, recreational areas, or refuges otherwise protected by the provision of Section 4(f), it would be contrary to the intent of section 147 to search for feasible and prudent alternatives to the use of such areas as a site for an access ramp to the public boat launching area. Such ramps must provide direct access to a public boat launching area adjacent to the highway. This policy only applies to the access ramp and public boat launching area; any other use of Section 4(f) property for the project will require Section 4(f) approval.

Question 8F: Is compliance with Section 4(f) necessary for park roads and parkways projects funded under FHWA's Federal Lands Highway Program, 23 U.S.C. 204?

Answer: No. Park roads and parkways projects funded under FHWA's Federal Lands Highway Program, 23 U.S.C. 204, are expressly excepted from Section 4(f) requirements within the Section 4(f) statute itself and by 23 CFR 774.13(e). A park road is ''a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States'' and a parkway is a road ''authorized by Act of Congress on lands to which title is vested in the United States'' (23 U.S.C. 101(a)).

Officials With Jurisdiction; Consultation; and Decisionmaking

9. Officials With Jurisdiction

Question 9A: Who are the officials with jurisdiction for a park, recreation area, or wildlife and waterfowl refuge and what is their role in determining Section 4(f) applicability?

Answer: The officials with jurisdiction are defined in 23 CFR 774.17. Under that definition, there may be more than one official with jurisdiction for the same Section 4(f) property. For public parks, recreation areas, and wildlife and waterfowl refuges (Question 1) the official(s) with jurisdiction are the official(s) of an agency or agencies that own and/or administer the property in question and who are empowered to represent the agency on matters related to the property.

There may be instances where the agency owning or administering the land has delegated or relinquished its authority to another agency, via an agreement on how some of its land will function or be managed. The FHWA will review the agreement and determine which agency has authority on how the land functions. If the authority has been delegated or relinquished to another agency, that agency should be contacted to determine the purposes and significance of the property. Management plans that address or officially designate the purposes of the property should be reviewed as part of this determination. After consultation, and in the absence of an official designation of purpose and function by the officials with jurisdiction, FHWA will base its decision of Section 4(f) applicability on an examination of the actual functions that exist (*See* 23 CFR 774.11(c)).

The final decision on the applicability of Section 4(f) to a particular property is the responsibility of FHWA. In reaching this decision FHWA will rely on the official(s) with jurisdiction to identify the kinds of activities and functions that take place, to indicate which of these activities constitute the primary purpose, and to state whether the property is significant. Documentation of the determination of non-applicability should be included in the project file.

Question 9B: Who are the officials with jurisdiction for historic sites?

Answer: The officials with jurisdiction are defined in 23 CFR 774.17. For historic properties (Question 2 and 7) the official with jurisdiction is the State Historic Preservation Officer (SHPO). If the historic property is located on tribal land the Tribal Historic Preservation Officer (THPO) is considered the official with jurisdiction. If the property is located on tribal land but the tribe has not assumed the responsibilities of the SHPO, as provided for in the NHPA, then the representative designated by the tribe shall be recognized as an official with jurisdiction in addition to the SHPO. When the Advisory Council on Historic Preservation (ACHP) is involved in the consultation concerning a property under Section 106 of the NHPA,[18] the ACHP will also be considered an official with jurisdiction over that resource. For a NHL, the National Park Service is also an official with jurisdiction over that resource.

Question 9C: Who are the officials with jurisdiction when a park, recreation area, or refuge is also a historic site or contains historic sites within its boundaries?

Answer: Some public parks, recreation areas, and wildlife and waterfowl refuges are also historic properties either listed or eligible for listing on the NR. In other cases, historic sites are located within the property boundaries of public parks, recreation areas, or wildlife and waterfowl refuges. When either of these situations exists and a project alternative proposes the use of land from the historic site there will be more than one official with jurisdiction. For historic sites the SHPO/THPO and ACHP if participating are officials with jurisdiction. Coordination will also be required with the official(s) of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property, such as commenting on project impacts to the activities, features, or attributes of property and on proposed mitigation measures. For a NHL, the National Park Service is also an official with jurisdiction over that resource.

Question 9D: When is coordination with the U.S. DOI required?

Answer: Prior to FHWA's final approval of a Section 4(f) use, individual Section 4(f) evaluations are provided to the U.S. DOI Office of Environmental Compliance and Policy, which coordinates the comments of all U.S. DOI agencies involved in the project (*See* 23 CFR 774.5(a)). However, the official with jurisdiction for Section 4(f) purposes is typically the field official charged with managing the

[18] 36 CFR Part 800 (*http://www.achp.gov/work106.html*).

Section 4(f) property at issue. For example, the official with jurisdiction for a project involving the use of a National Wildlife Refuge would be the Refuge Manager. If it is not clear which individual within the U.S. DOI is the official with jurisdiction for a particular Section 4(f) property, U.S. DOI's Office of Environmental Compliance and Policy should be consulted to resolve the question. The U.S. DOI has very specific expectations regarding the submission of Section 4(f) documents.[19] If the Section 4(f) property is under the jurisdiction of the U.S. Forest Service, the Department of Agriculture would be contacted for its review. The final authority on the content and format of Section 4(f) documents is FHWA's, as specified in 23 CFR Part 774, this *Section 4(f) Policy Paper* and the *Technical Advisory,* T 6640.8A, Guidance for Preparing and Processing of Environmental and Section 4(f) Documents.

It is not necessary to coordinate project specific applications of existing programmatic Section 4(f) evaluations with the U.S. DOI unless the U.S. DOI owns or has administrative oversight over the Section 4(f) property involved. In these cases, FHWA will need written concurrence from the U.S. DOI as the official with jurisdiction as stipulated in the applicable programmatic Section 4(f) evaluation. Consultation with the U.S. DOI was conducted during the development of all the existing programmatic Section 4(f) evaluations. Development of any new programmatic Section 4(f) evaluations would also require coordination with the U.S. DOI before they are made available for use (*See* 23 CFR 774.3(d)(2)).

Similarly, it is not necessary to conduct project-level coordination with the U.S. DOI when processing *de minimis* impact determinations unless the U.S. DOI has administrative oversight over the public park, recreation area, or wildlife and waterfowl refuge involved. In these situations, FHWA must obtain concurrence from the U.S. DOI as the official having jurisdiction that there is no adverse effect to the activities, features, or attributes of the property (*See* 23 CFR 774.5(b)). When a *de minimis* impact determination is anticipated for a historic site owned or administered by the U.S. DOI, and when the historic site is a NHL, the U.S. DOI will have the opportunity to participate during the Section 106 consultation as a consulting party (*See* Questions 11 through 13 for further guidance on de minimis impact determinations).

For situations in which the Section 4(f) property is encumbered with a Federal interest, for example as a result of a U.S. DOI grant, the answer to Question 1D or Question 31 may apply.

Question 9E: What is the official status of the *Handbook on Departmental Reviews of Section 4(f) Evaluations,* originally issued in February 2002 (and any subsequent revisions) by the U.S. DOI Office of Environmental Policy and Compliance?

Answer: The U.S. DOI Handbook [20] is intended to provide guidance to the National Park Service (NPS), the U.S. Fish and Wildlife Service and other designated lead bureaus in the preparation of U.S. DOI comments on the Section 4(f) evaluations prepared by the U.S. DOT pursuant to the authority granted in the Section 4(f) statute. The Handbook is an official U.S. DOI document and includes departmental opinion related to the applicability of Section 4(f) to lands for which they have jurisdiction and authority. The Section 4(f) statute requires U.S. DOT to consult and cooperate with the U.S. DOI as well as the Departments of Agriculture and Housing and Urban Development, as appropriate in Section 4(f) program and project related matters. The FHWA values the U.S. DOI's opinions related to the resources under their jurisdiction, and while the Handbook is a resource which FHWA may consider, it is not the final authority on Section 4(f) determinations.

Official FHWA policy on the applicability of Section 4(f) to lands that fall within the jurisdiction of the U.S. DOI is contained within 23 CFR part 774 and this Section 4(f) Policy Paper. While FHWA is not legally bound by the guidance contained within the Handbook or the comments provided by the U.S. DOI or lead bureaus, every attempt should be made to reach agreement during project consultation. In some situations, one of the bureaus may be an official with jurisdiction. When unresolved conflicts arise during coordination with the U.S. DOI related to the applicability of Section 4(f) to certain types of property, it might be necessary for the Division Office to contact the FHWA Headquarters Office of Project Development and Environmental Review for assistance.

Question 9F: Section 4(f) also requires cooperation and consultation with the U.S. Department of Agriculture (USDA) and the U.S. Department of Housing and Urban Development (HUD). When is coordination with the USDA or HUD on a Section 4(f) matter appropriate?

Answer: Many national forests under the jurisdiction of the U.S. Forest Service of the USDA serve as multiple-use land holdings as described in Question 4. If the project uses land of a national forest, coordination with the USDA as the official with jurisdiction over the resource would be appropriate in determining the purposes served by the land holding and the resulting extent of Section 4(f) applicability to the land holding. HUD would be involved only in cases where HUD had an interest in a Section 4(f) property.

Question 9G: Who makes Section 4(f) decisions and *de minimis* impact determinations?

Answer: The FHWA Division Administrator is the responsible official for all Section 4(f) applicability decisions, approvals, and *de minimis* impact determinations for Federal-aid projects. The FHWA Federal Lands Highway Division Engineer has this authority for Federal Lands projects. Coordination with the FHWA Headquarters or the FHWA Office of the Chief Counsel is not required for routine *de minimis* impact determinations but is recommended where assistance is needed for controversial projects or complex situations. It will be necessary for FHWA to consult and coordinate with the official(s) with jurisdiction as discussed above in making determinations of applicability and in approving the use of Section 4(f) property. When a programmatic Section 4(f) evaluation is relied upon to satisfy Section 4(f), the consultation requirements and approval process for the specific programmatic evaluation must be followed (*See* 23 CFR 774.3(d)).

10. Section 4(f) Evaluations for Tiered Projects

Question 10: How is Section 4(f) handled in tiered NEPA documents?

Answer: The FHWA must comply with 23 CFR 774.7(e) when tiered NEPA documents are used. In a tiered Environmental Impact Statement (EIS), the project development process moves from a broad scale examination at the first-tier stage to a more site specific evaluation in the second-tier stage. During the first-tier stage the detailed information necessary to complete the Section 4(f) approval may not be available. Even so, this does not relieve

[19] *http://www.doi.gov/pmb/oepc/nrm/upload/Environmental_Review_Process.pdf.*

[20] *http://www.doi.gov/oepc/handbook.html.*

the FHWA from its responsibility to determine the possibility of making *de minimis* impact determinations or to consider alternatives that avoid the use of Section 4(f) properties during the first-tier stage. This analysis and documentation should address potential uses of Section 4(f) property and whether those uses could have a bearing on the decision to be made during this tier.

If sufficient information is available, a preliminary Section 4(f) approval may be made at the first-tier stage as to whether the impacts resulting from the use of a Section 4(f) property are *de minimis* or whether there are feasible and prudent avoidance alternatives. This preliminary approval must include all possible planning to minimize harm to the extent that the level of detail available at this stage allows (23 CFR 774.7(e)(1)). This planning may be limited to a commitment to ensure that opportunities to minimize harm at subsequent stages in the project development process have not been precluded by decisions made at the first-tier stage. Any preliminary Section 4(f) approvals must be incorporated into the first-tier EIS (23 CFR 774.7(e)(1)).

If sufficient information is unavailable during the first-tier stage, then the EIS may be completed without any preliminary Section 4(f) approvals. The documentation should state why no preliminary approval is possible during the first-tier stage and clearly explain the process that will be followed to complete Section 4(f) evaluations during subsequent tiers. The extent to which a Section 4(f) approval (preliminary or final) anticipated to be made in a subsequent tier may have an effect on any decision made during the first-tier stage should be discussed. Schedules to complete Section 4(f) evaluations, if available, should also be reported.

Preliminary first-tier Section 4(f) approvals will be finalized in the second-tier CE, EA, final EIS, ROD or FONSI, as appropriate (*See* 23 CFR 774.7(e)(2)). If no new Section 4(f) use, other than a *de minimis* impact, is identified in the second-tier study and if all possible planning to minimize harm has occurred, then the second-tier Section 4(f) approval may finalize the preliminary approval by reference to the first-tier documentation. Re-evaluation of the preliminary Section 4(f) approval is only needed to the extent that new or more detailed information available at the second-tier stage raises new Section 4(f) concerns not already considered.

De Minimis Impact Determinations

11. *De minimis* Impact Determinations for Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

Question 11A: What constitutes a *de minimis* impact with respect to a park, recreation area, or wildlife and waterfowl refuge?

Answer: An impact to a public park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if the transportation use of the Section 4(f) property, including incorporation of any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f). Language included in the SAFETEA–LU Conference Report provides additional insight on the meaning of *de minimis* impact:

> The purpose of the language is to clarify that the portions of the resource important to protect, such as playground equipment at a public park, should be distinguished from areas such as parking facilities. While a minor but adverse effect on the use of playground equipment should not be considered a *de minimis* impact under Section 4(f), encroachment on the parking lot may be deemed *de minimis,* as long as the public's ability to access and use the site is not reduced.

(Conference Report of the Committee of Conference on H.R. 3, Report 109–203, page 1057).

This simple example helps to distinguish the activities, features, or attributes of a Section 4(f) property that are important to protect from those which can be used without resulting in adverse effects. Playground equipment in a public park may be central to the recreational value of the park that Section 4(f) is designed to protect. The conference report makes it clear that when impacts are proposed to playground equipment or other essential features, a *de minimis* impact finding will at a minimum require a commitment to replace the equipment with similar or better equipment at a time and in a location that results in no adverse effect to the recreational activity. A parking lot encroachment or other similar type of land use, on the other hand, could result in a *de minimis* impact with minimal mitigation, as long as there are no adverse effects on public access and the official(s) with jurisdiction agree.

The impacts of a transportation project on a park, recreation area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

(1) The transportation use of the Section 4(f) property, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f);

(2) The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, or attributes of the Section 4(f) property; and

(3) The official(s) with jurisdiction over the property, after being informed of the public comments and FHWA's intent to make the *de minimis* impact finding, concur in writing that the project will not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f).

(*See* 23 CFR 774.5(b)(2), 23 CFR 774.17). The concurrence of the official(s) with jurisdiction that the protected activities, features, or attributes of the resource are not adversely affected must be in writing (23 CFR 774.5(b)(2)(ii)). The written concurrence can be in the form of a signed letter on agency letterhead, signatures in concurrence blocks on transportation agency documents, agreements provided via email or other method deemed acceptable by the FHWA Division Administrator. Obtaining these agreements in writing and retaining them in the project file is consistent with effective practices related to preparing project administrative records.

Question 11B: What role does mitigation play in the *de minimis* impact finding?

Answer: *De minimis* impact determinations are based on the degree of impact after the inclusion of any measure(s) to minimize harm, (such as any avoidance, minimization, mitigation, or enhancement measures) to address the Section 4(f) use (i.e., net impact). The expected positive effects of any measures included in a project to mitigate the adverse effects to a Section 4(f) property must be taken into account when determining whether the impact is *de minimis* (*See* 23 CFR 774.3(b)). The purpose of taking such measures into account is to encourage the incorporation of Section 4(f) protective measures as part of the project. *De minimis* impact findings must be expressly conditioned upon the implementation of any measures that were relied upon to reduce the impact to a *de minimis* level (*See* 23 CFR

774.7(b)). The implementation of such measures will become the responsibility of the project sponsor with FHWA oversight (*See* 23 CFR 771.109(b)).

Question 11C: What constitutes compliance with the public notice, review and comment requirements for *de minimis* impact findings for parks, recreation areas or wildlife and waterfowl refuges?

Answer: Information supporting a *de minimis* impact finding for a park, recreation area or refuge should be included in the NEPA document prepared for the project. This information includes, at a minimum, a description of the involved Section 4(f) property(ies), use and impact(s) to the resources and any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) that are included in the project as part of the *de minimis* impact finding. The public involvement requirements associated with specific NEPA document and process will, in most cases, be sufficient to satisfy the public notice and comment requirements for the *de minimis* impact finding (*See* 23 CFR 774.5(b)(2)).

In general, the public notice and comment process related to *de minimis* impact findings will be accomplished through the State DOT's approved public involvement process (*See* 23 CFR 771.111(h)(1)). For those actions that do not routinely require public review and comment (e.g., certain categorical exclusions and re-evaluations) but for which a *de minimis* impact finding will be made, a separate public notice and opportunity for review and comment will be necessary. In these cases, appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of the Section 4(f) property, the impacts, and public interest. Possible methods of public involvement are many and include newspaper advertisements, public meetings, public hearings, notices posted on bulletin boards (for properties open to the public), project Web sites, newsletters, and placement of notices or documents at public libraries. All comments received and responses thereto, should be documented in the same manner that other comments on the proposed action would be incorporated in the project file. Where public involvement was initiated solely for the purpose of a *de minimis* impact finding, responses or replies to the public comments may not be required, depending on the substantive nature of the comments. All comments and responses should be documented, as appropriate, in the project file.

12. *De minimis* Impact Determinations on Historic Sites

Question 12A: What are the requirements for *de minimis* impact on a historic site?

Answer: A finding of *de minimis* impact on a historic site may be made when:

(1) FHWA has considered the views of any consulting parties participating in the consultation required by Section 106 of the NHPA, including the Secretary of the Interior or his representative if the property is a NHL;

(6) The SHPO/THPO, and Advisory Council on Historic Preservation (ACHP) if participating in the Section 106 consultation, are informed of FHWA's intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination of ''no adverse effect;'' and

(7) The Section 106 process results in a determination of ''no adverse effect'' with the written concurrence of the SHPO/THPO, and ACHP if participating in the Section 106 consultation.[21]

(*See* 23 CFR 774.5(b)(1) and the definition of *de minimis* impact in 23 CFR 774.17.)

Question 12B: How should the concurrence of the SHPO/THPO, and ACHP if participating in the Section 106 determination of effect, be documented when the concurrence will be the basis for a *de minimis* impact finding?

Answer: Section 4(f) requires that the SHPO/THPO, and ACHP if participating, must concur in writing in the Section 106 determination of no adverse effect (*See* 23 CFR 774.5(b)(1)(ii)). The request for concurrence in the Section 106 determination should include a statement informing the SHPO/THPO, and ACHP if participating, that FHWA or FTA intends to make a *de minimis* impact finding based upon their concurrence in the Section 106 determination.

Under the Section 106 regulation, if a SHPO/THPO does not respond within a specified time frame FHWA may move forward to the next step of the Section 106 process but Section 4(f) explicitly requires their written concurrence (*See* 23 CFR 774.5(b)(1)(ii)). It is therefore recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

Question 12C: For historic sites, will a separate public review process be necessary for the determination of a *de minimis* impact?

Answer: No. The FHWA will consult with the parties participating in the Section 106 process but is not required to provide additional public notice or provide additional opportunity for review and comment. Documentation of consulting party involvement is required (*See* 23 CFR 774.5(b) and 774.7(b)). In addition, for projects requiring the preparation and distribution of a NEPA document, the information supporting a *de minimis* impact finding will be included in the NEPA documentation and the public will be afforded an opportunity to review and comment during the formal NEPA process.

Question 12D: Certain Section 106 programmatic agreements (PAs) allow the lead agency to assume the concurrence of the SHPO/THPO in the determination of *no adverse effect* or *no historic properties affected* if a response to a request for concurrence is not received within the time period specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the written concurrence needed to make a *de minimis* impact finding?

Answer: In accordance with the provisions of a formal Section 106 programmatic agreement (PA), if the SHPO/THPO does not respond to a request for concurrence in the Section 106 determination within a specified time frame, the non-response together with the written PA, will be considered written concurrence in the Section 106 determination that will be the basis for the *de minimis* impact finding by FHWA. The FHWA must inform the SHPO/THPO who are parties to such PAs, in writing, that a non-response which is treated as a concurrence in a no adverse effect or no historic properties affected determination will also be treated as the written concurrence for purposes of the FHWA *de minimis* impact finding (*See* 23 CFR 774.5(b)(1)(ii)). It is recommended that this understanding of the parties be documented via formal correspondence

[21] Although the Section 4(f) statute and regulations also provide for a *de minimis* impact determination in the situation where there is a use of a historic site resulting in a Section 106 determination of *no historic properties affected,* FHWA has not yet encountered any such situation in practice. If such situation arises, a *de minimis* impact determination would be appropriate.

or other written means and appended to the existing PA. There is no need to amend the PA itself.

13. Other *De minimis* Impact Considerations

Question 13A: Are *de minimis* impact findings limited to any particular type of project or National Environmental Policy Act (NEPA) document?

Answer: No, the *de minimis* impact criteria may be applied to any project, as appropriate, regardless of the type of environmental document required by the NEPA process as described in the FHWA Environmental Impact and Related Procedures (*See* 23 CFR 771.115).

Question 13B: What effect does the *de minimis* impact provision have on the application of the existing FHWA nationwide programmatic Section 4(f) evaluations?

Answer: None. Existing FHWA programmatic Section 4(f) evaluations [22] remain in effect and may be applied, as appropriate, to the use of Section 4(f) property by a highway project.

Question 13C: Can a *de minimis* impact finding be made for a project as a whole, when multiple Section 4(f) properties are involved?

Answer: No, when multiple Section 4(f) properties are present in the study area and potentially used by a transportation project, *de minimis* impact findings must be made for the individual Section 4(f) properties because 23 CFR 774.3 requires an approval to use Section 4(f) property. The impacts to Section 4(f) properties and any impact avoidance, minimization, and mitigation or enhancement measures must be considered on an individual resource basis and *de minimis* impact findings made individually for each Section 4(f) property. When there are multiple resources for which *de minimis* impact findings are appropriate, however, the procedural requirements of Section 4(f) can and should be completed in a single process, document and circulation, so long as it is clear that distinct determinations are being made. Also in these cases, the written concurrence of the official(s) with jurisdiction may be provided for the project as a whole, so as long as the *de minimis* impacts findings have been made on an individual resource basis. For example, a no adverse effect determination made on an undertaking as a whole may be used to support individual *de minimis* impact findings provided individual historic sites are clearly identified in the Section 106 documentation.

Additional Example and Other Considerations

14. School Playgrounds

Question 14: Are publicly owned school playgrounds subject to the requirements of Section 4(f)?

Answer: While the primary purpose of public school playgrounds is generally for structured physical education classes and recreation for students, these properties may also serve significant public recreational purposes and therefore may be subject to Section 4(f) requirements. When a public school playground serves only school activities and functions, the playground is not subject to Section 4(f). When a public school playground is open to the public and serves either organized or substantial walk-on recreational purposes that are determined to be significant (*See* Question 1), it will be subject to the requirements of Section 4(f). The actual function of the playground is the determining factor in these circumstances. Documentation should be obtained from the officials with jurisdiction over the facility stating whether or not the playground is of local significance for recreational purposes.

There may be more than one official with jurisdiction over a school playground. A school official is considered to be the official with jurisdiction of the land during school activities. However, in some cases a school board may have authorized another public agency (e.g., the city park and recreation department) to control the facilities after school hours. In such cases, the public agency with authority to control the playground would be considered an official with jurisdiction with regard to any after-hours use of the playground. The FHWA is responsible for determining which official or officials have jurisdiction over a playground.

The term playground refers to the area of the school property developed and/or used for public park or recreation purposes such as baseball diamonds, soccer fields, tennis courts, track and field facilities, and other features such as jungle gyms or swing sets. This can also include open space or practice fields if those areas serve a park or recreation function. Section 4(f) would apply to the playground areas only and not the entire campus, unless the school and campus are also significant historic sites.

15. Trails and Shared Use Paths

Question 15A: Do the requirements of Section 4(f) apply to shared use paths or similar facilities?

Answer: FHWA must comply with 23 CFR 774.13(f) when determining if a Section 4(f) approval is necessary for the use of a trail, path, bikeway, or sidewalk. If the publicly owned facility is primarily used for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply since it is not a recreational area. Section 4(f) would apply to a publicly owned, shared use path or similar facility (or portion thereof) designated or functioning primarily for recreation, unless the official(s) with jurisdiction determines that it is not significant for such purpose. During early consultation, it should be determined whether or not a management plan exists that addresses the primary purpose of the facility in question. If the exceptions in 23 CFR 774.13(f) and (g) do not apply, the utilization of the *Programmatic Section 4(f) Evaluation for Independent Bikeway or Walkway Construction Projects* should be considered if the facility is within a park or recreation area. Whether Section 4(f) applies or not, it is FHWA's policy that every reasonable effort should be made to maintain the continuity of existing and designated shared use paths and similar facilities.[23]

Question 15B: The National Trails System Act permits the designation of scenic, historic, and recreation trails. Are these trails or other designated scenic or recreation trails on publicly owned land subject to the requirements of Section 4(f)?

Answer: FHWA must comply with 23 CFR 774.13(f) when determining if a Section 4(f) approval is necessary for the use of a trail, path, bikeway, or sidewalk. National Scenic Trails (other than the Continental Divide National Scenic Trail) and National Recreation Trails that are on publicly owned recreation land are subject to Section 4(f), provided the trail physically exists on the ground thereby enabling active recreational use.

The Continental Divide National Scenic Trail and National Historic Trails are treated differently. Public Law 95–

[22] *http://environment.fhwa.dot.gov/projdev/4fnspeval.asp.*

[23] Title 23, Section 109(m) states: ''The Secretary shall not approve any project or take any regulatory action under this title that will result in the severance of an existing major route or have significant adverse impact on the safety for non-motorized transportation traffic and light motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route exists.''

625 provides that ''except for designated protected components of the trail, no land or site located along a designated National Historic Trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of [Section 4(f)] unless such land or site is deemed to be of historical significance under the appropriate historical criteria such as those for the [NR].'' FHWA interprets this to mean that while the Continental Divide National Scenic Trail and the National Historic Trails themselves are exempt from Section 4(f), trail segments (including similar components such as trail buffers or other adjacent sites that were acquired to complement the trails) that are on or eligible for the NR are subject to Section 4(f) (*See* 23 CFR 774.13(f)(2)).

Question 15C: Are shared use paths, bikeways, or designated scenic or recreational trails on highway rights-of-way subject to the requirements of Section 4(f)?

Answer: FHWA must comply with 23 CFR 774.13(f) when determining if a Section 4(f) approval is necessary for the use of a trail, path, bikeway, or sidewalk. If a path or trail is simply described as occupying the right-of-way of the highway and is not limited to any specific location within the right-of-way, a use of land would not occur provided that adjustments or changes in the alignment of the highway or the trail would not substantially impair the continuity of the path or trail. In this regard, it would be helpful if all future designations, including those made under the National Trails System Act, describe the location of the trail only as generally in the right-of- way.

Question 15D: Are trails on privately owned land, including land under public easement and designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer: FHWA must comply with 23 CFR 774.13(f) when determining if a Section 4(f) approval is necessary for the use of a trail, path, bikeway, or sidewalk. Section 4(f) generally does not apply to trails on privately owned land. Section 4(f) could apply if an existing public easement permits public access for recreational purposes. In any case, it is FHWA's policy that every reasonable effort should be made to maintain the continuity of existing and designated trails.

Question 15E: Does Section 4(f) apply to trail-related projects funded under the Recreational Trails Program (RTP)?

Answer: No, projects funded under the Recreational Trails Program (RTP)[24] are exempt from the requirements of Section 4(f) by statute.[25] The exemption is limited to Section 4(f) and does not apply to other environmental requirements, such as NEPA or the NHPA.

16. User or Entrance Fees

Question 16: Does the charging of an entry or user fee affect Section 4(f) eligibility?

Answer: Many eligible Section 4(f) properties require a fee to enter or use the facility such as State Parks, National Parks, publicly owned ski areas, historic sites and public golf courses. The assessment of a user fee is generally related to the operation and maintenance of the facility and does not in and of itself negate the property's status as a Section 4(f) property. Therefore, it does not matter in the determination of Section 4(f) applicability whether or not a fee is charged, as long as the other criteria are satisfied.

Consider a public golf course as an example. Greens-fees are usually if not always required (Question 18A) and these resources are considered Section 4(f) properties when they are open to the public and determined to be significant. The same rationale should be applied to other Section 4(f) properties in which an entrance or user fee is required.

17. Transportation Enhancement Projects

Question 17A: How is Section 4(f) applied to transportation enhancement activity projects? [26]

Answer: FHWA must comply with 23 CFR 774.13(g) when determining if a Section 4(f) approval is necessary for a use by a transportation enhancement project or a mitigation activity. A transportation enhancement activity (TEA) is one of the specific types of activities set forth by statute at 23 U.S.C. 101(a)(35). TEAs often involve the enhancement of an activity, feature or attribute on property that qualifies as a Section 4(f) property. In most cases, such work would be covered by the exception in 23 CFR 774.13(g) when the work is solely for the purpose of preserving or enhancing an activity, feature or attribute that qualified the property for Section 4(f) protection. The official(s) with jurisdiction over the Section 4(f) property must concur in writing with this assessment. For a use of Section 4(f) property to occur in conjunction with a TEA, there must be a transportation use of land from an existing Section 4(f) property. In other words, the State DOT or other applicant as defined in 23 CFR 774.17 must acquire land from a Section 4(f) property and convert its function from park, recreation, refuge or historic purposes to a transportation purpose.

Many TEA-funded activities will occur on land that remains owned by a non-transportation entity (such as a local or State parks and recreation agency). An example would be a TEA proposed to construct a new bicycle/pedestrian path within a public park or to reconstruct an already existing bicycle/pedestrian path within a public park. Though related to surface transportation, this type of project is primarily intended to enhance the park. Either scenario would qualify as an exception for Section 4(f) approval assuming the official(s) with jurisdiction agree in writing that the TEA provides for enhancement of the bicycle/pedestrian activities within the park.

A variation of the above example is local public agency that proposes a TEA for construction of a new bicycle/pedestrian facility that requires the acquisition of land from a public park. The purpose of the project is to promote a non-motorized mode of travel for commuters even though some recreational use of the facility is likely to occur. This TEA requires a transfer of land from the parks and recreation agency to the local transportation authority for ultimate operation and maintenance of the newly constructed bicycle/pedestrian facility. Since this TEA would involve the permanent incorporation of Section 4(f) land into a transportation facility, there is a use of Section 4(f) land and the appropriate Section 4(f) evaluation and documentation would be required. In this instance, the *Programmatic Section 4(f) Evaluation for Independent Bikeway or Walkway Construction Projects* [27]

[24] More information on the Recreational Trails Program is available at *www.fhwa.dot.gov/environment/rectrails/.*

[25] 23 U.S.C. 206(h)(2) Recreational purpose.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

[26] For more information see the *FHWA Final Guidance on Transportation Enhancement Activities;* December 17, 1999, and the TE Program Related Questions & Answers; August 2002, found at the Transportation Enhancement Web site (*www.fhwa.dot.gov/environment/te/index.htm*).

[27] *http://www.environment.fhwa.dot.gov/projdev/4fbikeways.asp.*

would likely apply depending on the particular circumstances of the project.

Other TEAs that involve acquisition of scenic or historic easements, or historic sites, often result in ultimate ownership and management of the facility by a non-transportation entity (such as a tourism bureau or historical society). An example would be the acquisition and/or restoration of a historic railroad station for establishment of a museum operated by a historical society. Even though Federal-aid transportation funds were used to acquire a historic building, a non-transportation entity ultimately will own and manage it. Accordingly, this TEA would qualify as an exception for Section 4(f) approval.

Section 106 still applies for any TEA involving a historic site on or eligible for listing on the NR. Please refer to the Nationwide Programmatic Agreement for Implementation of Transportation Enhancement Activities [28] that was issued in 1997 for more details.

For other complex or complicated situations involving TEA projects, it is recommended that the FHWA Division Office contact the Headquarters Office of Project Development and Environmental Review, the Resource Center Environment Technical Services Team, or the Office of the Chief Counsel for assistance.

Question 17B: Is the exception in 23 CFR 774.13(g) limited solely to work that is funded as a TEA pursuant to 23 U.S.C. 101(a)(35)?

Answer: No. The exception cited in 23 CFR 774.13(g) refers to TEAs—though the term ''project'' is used instead of ''activity''—and to mitigation activities (*See* Question 29 regarding mitigation activities). The discussion in the corresponding section of the preamble to the regulation involves TEAs within the context of 23 U.S.C. 101(a)(35), but does not explicitly limit the exception to TEAs funded via the 10% set aside of Surface Transportation Program funds (*See* 73 *FR* 13368, March 12, 2008). If proposed work very closely resembles a TEA but is not proposed for funding as a TEA, there are several options to consider.

If the proposed work could be characterized as a project mitigation feature, then the exception in 23 CFR 774.13(g) would apply without further consideration contingent upon the official(s) with jurisdiction concurring in writing that the work is solely for the purpose of preserving or enhancing an activity, feature or attribute that qualified the property for Section 4(f) protection.

In addition, the introductory paragraph of this section of the regulation indicates that the ''exceptions include, but are not limited to'' those listed in the ensuing paragraphs. If proposed work resembles a TEA, avoidance of the property could be characterized as being inconsistent with the preservation purpose of the Section 4(f) statute. Uses of Section 4(f) property under the statute have long been considered to include only adverse uses that harm or diminish the resource that the statute seeks to protect. Further, this exception is limited to situations in which the official(s) with jurisdiction over the Section 4(f) property agrees that the use will either preserve or enhance an activity, feature, or attribute of the property that qualifies it for protection under Section 4(f). Work similar to TEAs may be very carefully evaluated on a case-by-case basis to determine if an exception for Section 4(f) approval might be justified consistent with the preservation purpose of the statute and 23 CFR 774.13(g).

If a Section 4(f) use is identified, under any scenario, the potential for complying with Section 4(f) via a *de minimis* impact finding or utilization of an approved programmatic Section 4(f) evaluation should be considered.

Question 17C: Is it possible for a TEA to create a Section 4(f) property?

Answer: Yes. TEA projects that are funded under TEA categories (A) *Provision of facilities for pedestrians and bicycles* and (H) *Preservation of abandoned railway corridors* (including the conversion and use of the corridors for pedestrian or bicycle trails) could create a new Section 4(f) resource. If a future Federal-aid highway project were to use the property, the fact that the resource was created with TEA funding would not preclude the application of Section 4(f).

18. Golf Courses

Question 18A: Are public golf courses subject to Section 4(f), even when fees and reservations are required?

Answer: Section 4(f) applies to golf courses that are owned, operated and managed by a public agency for the primary purpose of public recreation and determined to be significant. Section 4(f) does not apply to privately owned and operated golf courses even when they are open to the general public. Golf courses that are owned by a public agency but managed and operated by a private entity may still be subject to Section 4(f) requirements depending on the structure of the agreement.

The fact that greens-fees (Question 16) or reservations (tee times) are required by the facility does not alter the Section 4(f) applicability, as long as the standards of public ownership, public access and significance are met.

Some golf courses are also historic sites. If a golf course is on or eligible for listing in the NR, then the Section 4(f) requirement for public ownership and public access will not apply.

Question 18B: Are military golf courses subject to the requirements of Section 4(f)?

Answer: Military golf courses are publicly owned (by the Federal Government) but are not typically open to the public at large. Because the recreational use of these facilities is limited to active duty and retired military personnel, family, and guests they are not considered to be public recreational areas and are not subject to the requirements of Section 4(f) (*See* Question 1D), unless they are significant historic sites (Question 2A).

19. Museums, Aquariums, and Zoos

Question 19: Does Section 4(f) apply to museums, aquariums and zoos?

Answer: Publicly owned museums, aquariums, and zoos are not normally considered parks, recreational areas, or wildlife and waterfowl refuges and are therefore not subject to Section 4(f), unless they are significant historic sites (Question 2A).

Publicly owned facilities such as museums, aquariums or zoos may provide additional park or recreational opportunities and will need to be evaluated on a case-by-case basis to determine if the primary purpose of the resource is to serve as a significant park or recreation area. To the extent that zoos are considered to be significant park or recreational areas, or are significant historic sites they will be treated as Section 4(f) properties.

20. Fairgrounds

Question 20: Are publicly owned fairgrounds subject to the requirements of Section 4(f)?

Answer: Section 4(f) is not applicable to publicly owned fairgrounds that function primarily for commercial purposes (e.g. stock car races, horse racing, county or state fairs), rather than as park or recreation areas. When fairgrounds are open to the public and function primarily for public recreation other than an annual fair, Section 4(f) applies only to those portions of land determined significant for park or

[28] *http://www.fhwa.dot.gov/environment/te/gmemo_program.htm.*

recreational purposes (*See* Question 1A), unless they are significant historic sites (Question 2A).

21. Bodies of Water

Question 21A: How does the Section 4(f) apply to publicly owned lakes and rivers?

Answer: Lakes are sometimes subject to multiple, even conflicting, activities and do not readily fit into one category or another. Section 4(f) would only apply to those portions of publicly owned lakes and/or adjacent publicly owned lands that function primarily for park, recreation, or refuge purposes. Section 4(f) does not apply to areas which function primarily for other purposes or where recreational activities occur on incidental, secondary, occasional or dispersed basis.

In general, rivers are not subject to the requirements of Section 4(f). Those portions of publicly owned rivers, which are designated as recreational trails are subject to the requirements of Section 4(f). Of course, Section 4(f) would also apply to lakes and rivers, or portions thereof, which are contained within the boundaries of a park, recreation area, refuge, or historic site to which Section 4(f) otherwise applies.

Question 21B: Are Wild and Scenic Rivers (WSR) subject to Section 4(f)?

Answer: FHWA must comply with 23 CFR 774.11(g) when determining if there is a use of a WSR. The *National Wild and Scenic Rivers Act* (WSRA) (16 U.S.C. 1271 et seq. and 36 CFR 297.3) identifies those rivers in the United States which are designated as part of the WSR System. A WSR is defined as a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System (National System). WSRs may be designated by Congress or, if certain requirements are met, the Secretary of the Interior. Each river is administered by either a Federal or state agency. Four Federal agencies have primary responsibility for the National Wild and Scenic Rivers System, specifically the Forest Service, the National Park Service, the Fish and Wildlife Service and the Bureau of Land Management.

Within this system there are wild, scenic and recreational designations. A single river can be classified as having separate or combined wild, scenic and recreation areas along the entire river. The designation of a river under the WSRA does not in itself invoke Section 4(f) in the absence of significant Section 4(f) attributes and qualities. In determining whether Section 4(f) is applicable to these rivers, FHWA should consult with the official with jurisdiction (Question 21D) to determine how the river is designated, how the river is being used and examine the management plan over that portion of the river. If the river is publicly owned and designated a recreational river under the WSRA or is a recreation resource under a management plan, then it would be a Section 4(f) property. Conversely, if a river is included in the System and designated as wild but is not being used as or designated under a management plan as a park, recreation area, wildlife and waterfowl refuge and is not a historic site, then Section 4(f) would not apply.

Significant publicly owned public parks, recreation areas, or wildlife and waterfowl refuges and historic sites (on or eligible of the NR) in a WSR corridor are subject to Section 4(f). Other lands in WSR corridors managed for multiple purposes may or may not be subject to Section 4(f) requirements, depending on the manner in which they are administered by the managing agency. Close examination of the management plan (as required by the WSRA) prior to any use of these lands for transportation purposes is necessary. Section 4(f) would apply to those portions of the land designated in a management plan for recreation or other Section 4(f) purposes as discussed above. Where the management plan does not identify specific functions, or where there is no plan, FHWA should consult further with the official with jurisdiction (Question 21D) prior to making the Section 4(f) determination. Privately owned lands in a WSR corridor are not subject to Section 4(f), except for significant historic and archeological sites when important for preservation in place (Question 3).

Question 21C: Does Section 4(f) apply to potential WSR corridors and adjoining lands under study (pursuant to Section 5(a) of the WSRA)?

Answer: No, Section 4(f) does not apply to potential WSRs and adjoining lands. In these cases, Section 4(f) would apply only to existing significant publicly owned public parks, recreation areas, refuges, or significant historic sites in the potential river corridor. It must be noted, however, that such rivers are protected under Section 12(a) of the WSRA,[29] which directs all Federal departments and agencies to protect river values and further recognizes that particular attention should be given to timber harvesting, road construction, and similar activities, which might be contrary to the purposes of this Act.

Question 21D: Who are the Officials with Jurisdiction for WSRs?

Answer: The definition of officials with jurisdiction is located in 23 CFR 774.17. For those portions of a WSR to which Section 4(f) applies, the official(s) with jurisdiction are the official(s) of the Federal agency or agencies that own or administer the affected portion of the river corridor in question. For State administered, federally designated rivers[30] the officials with jurisdiction include both the State agency designated by the respective Governor and the Secretary of the Interior.

22. Scenic Byways

Question 22: How does Section 4(f) apply to scenic byways?

Answer: The designation of a road as a scenic byway is not intended to create a park or recreation area within the meaning of Section 4(f). The reconstruction, rehabilitation, or relocation of a publicly-owned scenic byway would not trigger Section 4(f) unless they are significant historic sites (Question 8).

23. Cemeteries

Question 23A: Does Section 4(f) apply to cemeteries?

Answer: Cemeteries would only be considered Section 4(f) properties if they are determined to be on or eligible for the NR as historic sites deriving significance from association with historic events, from age, from the presence of graves of persons of transcendent importance, or from distinctive design features.[31]

Question 23B: Does Section 4(f) apply to other lands that contain human remains?

Answer: Informal graveyards, family burial plots, or Native American burial sites and those sites that contain Native American grave goods associated with burials, are not in and of themselves

[29] ''The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act.''

[30] Section 2(a)(ii) of the WSRA, 16 U.S.C. 1273(a)(ii)).

[31] For more information on the subject of historic cemeteries see National Register Bulletin #41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places;* 1992 *http://www.cr.nps.gov/nr/publications/bulletins/nrb41/.*

considered to be Section 4(f) property except when they are individually listed in or eligible for the NR. These sites should not automatically be considered only as archeological resources as many will have value beyond what can be learned by data recovery. If these sites are considered archeological resources on or eligible for the NR and also warrant preservation in place, Section 4(f) applies (*See* Question 3A).

When conducting the Section 4(f) determination for lands that may be Native American burial sites or sites with significance to a federally recognized tribe, consultation with appropriate representatives from the federally recognized tribes with interest in the site is essential. Sites containing human remains may also have cultural and religious significance to a tribe (S*ee* Question 6 for a discussion of Traditional Cultural Places).

24. Joint Development (Park With Highway Corridor)

Question 24: When a public park, recreation area, or wildlife and waterfowl refuge is established and an area within the Section 4(f) property is reserved for transportation use prior to or at the same time the Section 4(f) property was established, do the requirements of Section 4(f) apply?

Answer: The FHWA must comply with 23 CFR 774.11(i) when determining if Section 4(f) applies to a property that was jointly planned for development with a future transportation corridor. Generally, the requirements of Section 4(f) do not apply to the subsequent use of the reserved area for its intended transportation purpose. This is because the land used for the transportation project was reserved from and, therefore, has never been part of the protected Section 4(f) property. Nor is a constructive use of the Section 4(f) property possible, since it was jointly planned with the transportation project. The specific governmental action that must be taken to reserve a transportation corridor with the Section 4(f) property is a question of State and local law, but may include ordinances, adopted land use plans, deed restrictions, or other actions. Evidence that the reservation was contemporaneous with or prior to the establishment of the Section 4(f) property should be documented in the project file. Subsequent statements of intent to construct a transportation project within the resource should not be considered sufficient documentation. All measures which have been taken to jointly develop the transportation corridor and the park should be completely documented in the project files. To provide flexibility for the future transportation project, State and local transportation agencies are advised to reserve wide corridors. Reserving a wide corridor will allow the future transportation project to be designed to minimize impacts on the environmental resources in the corridor. The FHWA encourages the joint planning for the transportation project and the Section 4(f) property to specify that any land not needed for the transportation project right-of-way be transferred to the adjacent Section 4(f) property once the transportation project is completed.

25. Planned Section 4(f) Properties

Question 25: Do the requirements of Section 4(f) apply to publicly owned properties planned for park, recreation area, or wildlife refuge and waterfowl refuge purposes, even though they are not presently functioning as such?

Answer: Section 4(f) applies when the land is one of the enumerated types of publicly owned lands and the public agency that owns the property has formally designated and determined it to be significant for park, recreation area, or wildlife and waterfowl refuge purposes. Evidence of formal designation would be the inclusion of the publicly owned land, and its function as a Section 4(f) property into a city or county Master Plan. A mere expression of interest or desire is not sufficient. For example, when privately held properties of these types are formally designated into a Master Plan for future park development, Section 4(f) is not applicable. The key is whether the planned facility is presently publicly owned, presently formally-designated for Section 4(f) purposes, and presently significant. When this is the case, Section 4(f) would apply.

26. Late Designation and Late Discovery of Section 4(f) Properties

Question 26A: Are properties in the transportation right-of-way designated (as park and recreation lands, wildlife and waterfowl refuges, or historic sites) late in the development of a proposed project subject to the requirements of Section 4(f)?

Answer: FHWA must comply with 23 CFR 774.13(c) when determining if a Section 4(f) approval is necessary to use a late-designated property. Except for archaeological resources, including those discovered during construction (Question 3B), a project may proceed without consideration under Section 4(f) if that land was purchased for transportation purposes prior to the designation or prior to a change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to the acquisition. The adequacy of effort made to identify properties protected by Section 4(f) should consider the requirements and standards that existed at the time of the search.

Question 26B: How do you address a Section 4(f) use identified late in the process?

Answer: When there will be a use of a Section 4(f) property that has changed or was not identified prior to processing a CE, FONSI, or ROD, a separate Section 4(f) approval will be required (23 CFR 774.9(c)) if a proposed modification of the alignment or design would require use of a Section 4(f) property; FHWA determines that Section 4(f) applies to the use of a property; or if a proposed modification of the alignment, design, or measures to minimize harm would result in a substantial increase in the amount of Section 4(f) property used, a substantial increase in the adverse impacts to Section 4(f) property, or a substantial reduction in the measures to minimize harm. Where a separate Section 4(f) approval is required, any activity not directly affected by the separate Section 4(f) approval can proceed during the analysis. A late discovery situation could also result when a property is overlooked despite a good faith effort to carry out adequate identification efforts and FHWA decides Section 4(f) now applies to a property. In cases where Section 4(f) may apply to archeological sites discovered during construction, the Section 4(f) process will be expedited and any required evaluation of feasible and prudent avoidance alternatives will take account of the level of investment already made (*See* Question 3B).

27. Temporary Recreational Occupancy or Use of Highway Rights-of-Way

Question 27: Does Section 4(f) apply to temporary recreational uses of land owned by a State DOT or other applicant and designated for transportation purposes?

Answer: FHWA must comply with 23 CFR 774.11(h) when determining the applicability of Section 4(f) to non-park properties that are temporarily functioning for recreation purposes. In situations where land owned by a SDOT or other applicant and designated for future transportation purposes (including highway rights-of-way) is temporarily occupied or being used for either authorized or unauthorized recreational purposes such as camping

or hiking, Section 4(f) does not apply (*See* 23 CFR 774.11(h)). For authorized temporary occupancy of transportation rights-of-way for park or recreation purposes, it is advisable to make clear in a limited occupancy permit, with a reversionary clause that no long-term right is created and the park or recreational activity is a temporary one that will cease once completion of the highway or transportation project resumes.

28. Tunneling or Bridging (Air Rights) and Section 4(f) Property

Question 28A: Is tunneling under a publicly owned public park, recreation area, wildlife or waterfowl refuge, or historic site subject to the requirements of Section 4(f)?

Answer: Section 4(f) applies to tunneling only if the tunneling:

(1) Disturbs archaeological sites that are on or eligible for the NR which warrant preservation in place;

(2) Causes disruption which would permanently harm the purposes for which the park, recreation, wildlife or waterfowl refuge was established;

(3) Substantially impairs the historic values of a historic site; or

(4) Otherwise does not meet the exception for temporary occupancy (*See* Question 7A).

Question 28B: Do the requirements of Section 4(f) apply to bridging over a publicly owned public park, recreation area, wildlife or waterfowl refuge, or historic site?

Answer: Section 4(f) applies to bridging a Section 4(f) property if piers or other appurtenances are physically located in the Section 4(f) property, requiring an acquisition of land from the property (actual use). Where the bridge will span the Section 4(f) property entirely, the proximity impacts of the bridge on the Section 4(f) property should be evaluated to determine if the placement of the bridge will result in a constructive use (*See* 23 CFR 774.15 and Question 7A). An example of a potential constructive use would be substantial impairment to the utility of a trail resulting from severely restricted vertical clearance. If temporary occupancy of a Section 4(f) property is necessary during construction, the criteria discussed in Question 7A will apply to determine use.

29. Mitigation Activities on Section 4(f) Property

Question 29: Does the expenditure of Title 23 funds for mitigation or other non-transportation activity on a Section 4(f) property result in a use of that property?

Answer: FHWA must comply with 23 CFR 774.13(g) when determining if a Section 4(f) approval is necessary for a proposed mitigation activity. A Section 4(f) use occurs only when Section 4(f) land is permanently incorporated into a transportation facility, there is a temporary occupancy that is adverse, or there is a constructive use. If mitigation activities proposed within a Section 4(f) property are solely for the preservation or enhancement of the resource and the official(s) with jurisdiction agrees in writing with this assessment, a Section 4(f) use does not occur.

An example involves the enhancement, rehabilitation or creation of wetland within a park or other Section 4(f) property as mitigation for a transportation project's wetland impacts. Where this work is consistent with the function of the existing park and considered an enhancement of the Section 4(f) property by the official with jurisdiction, then Section 4(f) would not apply. In this case the Section 4(f) land is not permanently incorporated into the transportation facility, even though it is a part of the project as mitigation.

30. Emergencies

Question 30: How does Section 4(f) apply in emergency situations?

Answer: In emergency situations, the first concern is responding to immediate threats to human health or safety, or immediate threats to valuable natural resources. Compliance with environmental laws, such as Section 4(f), is considered later. The FHWA may participate in the costs of repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. The Emergency Relief (ER) Program, (23 U.S.C. 125), supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help pay for unusually heavy expenses resulting from extraordinary conditions. As FHWA retains discretionary control over whether to fund projects under this program, Section 4(f) applies to all ER funding decisions. The general sequence of events following the emergency is:

(1) Restore essential service. State and local highway agencies are empowered to respond immediately, which includes beginning emergency repairs to restore essential traffic service and to prevent further damage to Federal-aid highway facilities. Section 4(f) compliance is not required at this stage.

(2) Governor's proclamation.

(3) Preliminary notification.

(4) Acknowledgement.

(5) Damage assessments.

(6) Formal state request.

(7) Division Administrator's finding.

(8) Implementation of projects (this is where Section 4(f) compliance occurs).

Under the ER Program, repairs are categorized either as ''emergency'' or ''permanent.'' Emergency repairs are made during and immediately following a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Permanent repairs to restore the highway to its pre-disaster condition normally occur after the emergency repairs have been completed.

Section 4(f) compliance occurs during the ''implementation of projects'' stage for both emergency repairs and permanent repairs. For emergency repairs, Section 4(f) compliance is undertaken after the emergency repairs have been completed. For permanent repairs, Section 4(f) compliance is undertaken as part of the normal NEPA project development process, just as it would be for any other type of Federal-aid or Federal lands project (i.e. it must be completed prior to the authorization of right-of-way and construction).

31. Section 6(f) and Other Non-U.S. DOT Grant-in-Aid Program Requirements

Question 31: How are Section 6(f) of the Land and Water Conservation Fund Act and other non-U.S. DOT Federal grant-in-aid program requirements administered for purposes similar to Section 4(f)'s preservationist purpose treated in the Section 4(f) process?

Answer: For projects that propose the use of land from a Section 4(f) property purchased or improved with Federal grant-in-aid funds under the *Land and Water Conservation Fund Act,* the *Federal Aid in Fish Restoration Act* (Dingell-Johnson Act), the *Federal Aid in Wildlife Act* (Pittman-Robertson Act), or other similar law, or the lands are otherwise encumbered with a Federal interest, coordination with the appropriate Federal agency is required to ascertain the agency's position on the land conversion or transfer. Other Federal requirements that may apply to the property should be determined through consultation with the officials with jurisdiction and/or appropriate U.S. DOI, Housing and Urban

Development, Federal Emergency Management Agency, or other Federal officials (*See* 23 CFR 774.5(d)). These Federal agencies may have regulatory authority or other requirements for converting land to a different use. These requirements are independent of the Section 4(f) requirements and must be satisfied during the project development process.

[FR Doc. 2012–17461 Filed 7–19–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21046]

Professional Transportation, Inc.—Asset Acquisition—CUSA ES, LLC and CUSA CSS, LLC

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Correction to Notice of Finance Application.

On June 29, 2012, notice of the above finance application was served and published in the **Federal Register** (77 FR 38884–85). The notice contained an omission in the address paragraph. The second sentence of the address paragraph should read as follows: ''In addition, send copies of comments to the parties' representatives: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1500, Indianapolis, IN 46204, and Larry C. Tomlin, Krieg DeVault LLP, One Indiana Square, Suite 2800, Indianapolis, IN 46204.'' All other information in the notice is correct.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: July 16, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–17596 Filed 7–19–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TREASURY

Office of Domestic Finance; Small Business, Community Development and Affordable Housing Policy; Small Business Lending Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Small Business Lending Fund (SBLF) within the Department of Treasury is soliciting comments concerning the Small Business Lending Survey it proposes to administer to participants in the SBLF.

DATES: Written comments should be received on or before August 20, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Office of Domestic Finance, Small Business Lending Fund; Daniel Rourke; 1500 Pennsylvania Avenue NW., Washington, DC 20220; 202–622–0984; *daniel.rourke@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Lending Survey of Participants in Small Business Lending Fund

Abstract: Established by the Small Business Jobs Act of 2010 (the Act), the Small Business Lending Fund (SBLF) is a dedicated investment fund that encourages lending to small businesses by providing capital to qualified community banks and community development loan funds (CDLFs) with assets of less than $10 billion. Through the SBLF, participating Main Street lenders and small businesses work together to help create jobs and promote economic growth in local communities across the nation.

The Act required that all U.S. Department of the Treasury (Treasury) investments for the SBLF be made by September 27, 2011. Through the SBLF, Treasury made investments in 332 community institutions, including banks, thrifts and CDLFs. The size of the SBLF portfolio is approximately $4.03 billion (approximately $3.9 billion in 281 community banks and approximately $100 million in 51 CDLFs). To encourage small business lending, the dividend or interest rate on SBLF funding provided to banks and thrifts is reduced as these participants increase their qualified small business lending. The SBLF does not use the same standards that the Small Business Administration uses to determine what qualifies as a small business loan. For more details about the program, please visit *www.treasury.gov/sblf.*

Treasury plans to conduct an annual lending survey with the program participants to identify the impact of the investment on lending to small businesses, consistent with the purpose of the Act to increase the availability of credit for small businesses. This survey is not required by law, but the SBLF Securities Purchase Agreement requires participants to complete a survey in a form specified by Treasury. Below is a description of the information that the SBLF Program Office is looking for to assist with the aforementioned annual lending survey.

Current Actions: Treasury plans to collect information from SBLF participants about the small business lending supported by SBLF's investment. SBLF will request information from participants on changes in small business lending capacity as a result of the SBLF investment, the amounts and volume of loans extended across different categories of small business lending attributable to the SBLF investment, and the types and extent of outreach undertaken to expand lending to small businesses in underserved communities and small businesses owned by women, minorities and veterans resulting from participation in the SBLF.

Type of Review: New, non-rulemaking.

Affected Public: Businesses or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: All 332 SBLF Participants.

Estimated Total Burden Hours: 2,656 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the SBLF, including whether the information shall have a practical utility; (b) the accuracy of the SBLF's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 16, 2012.

Robert Dahl,

Treasury Departmental Clearance Officer.

[FR Doc. 2012–17584 Filed 7–19–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions (CDFI) Fund, a government corporation within the Department of the Treasury, is soliciting comments concerning the ''New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application'' (hereafter, the Application).

DATES: Written comments should be received on or before September 18, 2012 to be assured of consideration.

ADDRESSES: Direct all comments to Robert Mulderig, Certification, Compliance Monitoring, and Evaluation Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to *ccme@cdfi.treas.gov,* or by facsimile to (202) 622–7754. Please note that this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: The Application may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Christopher Stever, Associate Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to *ccme@cdfi.treas.gov,* or by facsimile to (202) 622–7754. Please note that this is not a toll-free number.

SUPPLEMENTARY INFORMATION: *Title:* New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

OMB Number: 1559–0014.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted in the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC 45D and created the NMTC Program. The Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years, expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits through the NMTC Program, an entity must be certified as a qualified Community Development Entity (CDE) and submit an allocation application to the CDFI Fund. Nonprofit entities and for-profit entities may be certified as CDEs by the CDFI Fund. In order to be certified as a CDE, an entity must be a domestic corporation or partnership, that: (1) Has a primary mission of serving or providing investment capital for low-income communities or low-income persons; and (2) maintains accountability to residents of low-income communities through their representation on any governing or advisory board of the entity.

Current Actions: Currently receiving and processing CDE certification applications.

Type of review: Extension.

Affected Public: CDEs and entities seeking CDE certification, including business or other for-profit institutions, nonprofit entities, and State, local and Tribal entities.

Estimated Number of Respondents: 300.

Estimated Annual Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 1,200 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund's Web site at *http://www.cdfifund.gov*. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: July 17, 2012.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–17718 Filed 7–19–12; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 51
Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–R09–OAR–2012–0021, FRL–9700–1]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve partially and disapprove partially a revision to Arizona's State Implementation Plan (SIP) to implement the regional haze program for the first planning period through July 31, 2018. This proposed action addresses only the portion of the SIP related to Arizona's determination of Best Available Retrofit Technology (BART) to control emissions from eight units at three electric generating stations: Apache Generating Station, Cholla Power Plant and Coronado Generating Station. EPA proposes to approve the State's determination that these sources are subject to BART, and to approve the emissions limits for sulfur dioxide (SO_2) and particulate matter (PM_{10}) at all the units. EPA proposes to disapprove the BART emissions limits for nitrogen oxides (NO_X) at most of the units. EPA also proposes to promulgate a Federal Implementation Plan (FIP) containing new emissions limits for NO_X as well as BART compliance requirements for the three facilities. We encourage the State to submit a revised SIP to replace all portions of our FIP, and we stand ready to work with the State to develop a revised plan. The Clean Air Act (CAA) requires states to prevent any future and remedy any existing man-made impairment of visibility in 156 national parks and wilderness areas designated as Class I areas. Arizona has a wealth of such areas. The three power plants affect visibility at 18 national parks and wilderness areas, including the Grand Canyon, Mesa Verde and the Petrified Forest. The State and EPA must work together to ensure that plans are in place to make progress toward natural visibility conditions at these national treasures.

DATES: Written comments must be received by the designated contact at the address below on or before August 31, 2012.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for further instructions on where and how to learn more about this proposal, attend a public hearing, or submit comments.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

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I. General Information

A. Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(1) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(2) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(3) The initials *AEPCO* mean or refer to Arizona Electric Power Cooperative.

(4) The initials *AFUDC* mean or refer to allowance for funds used during construction.

(5) The initials *APS* mean or refer Arizona Public Service Company.

(6) The words *Arizona* and *State* mean the State of Arizona.

(7) The initials *BART* mean or refer to Best Available Retrofit Technology.

(8) The term *Class I area* refers to a mandatory Class I Federal area.[1]

(9) The initials *CBI* mean or refer to Confidential Business Information.

(10) The initials *CEMS* mean or refer to continuous emission monitoring system.

(11) The initials *COFA* mean or refer to close-coupled overfire air.

(12) The initials *CY* mean or refer to Calendar Year

(13) The initials *EGU* mean or refer to Electric Generating Unit.

(14) The initials *ESPs* mean or refer to electrostatic precipitators.

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

[1] Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.''

(16) The initials *FGD* mean or refer to flue gas desulfurization.

(17) The initials *FGR* mean or refer to flue gas recirculation.

(18) The initials *FIP* mean or refer to Federal Implementation Plan.

(19) The initials *FLMs* mean or refer to Federal Land Managers.

(20) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

(21) The initials *IPM* mean or refer to Integrated Planning Model.

(22) The initials *LNB* mean or refer to low-NO_X burners.

(23) The initials *LTS* mean or refer to Long-Term Strategy.

(24) The initials *MW* mean or refer to megawatts.

(25) The initials *NEI* mean or refer to National Emission Inventory.

(26) The initials NH_3 mean or refer to ammonia.

(27) The initials NO_X mean or refer to nitrogen oxides.

(28) The initials *NP* mean or refer to National Park.

(29) The initials *OC* mean or refer to organic carbon.

(30) The initials *OFA* mean or refer to over fire air.

(31) The initials *PM* mean or refer to particulate matter.

(32) The initials $PM_{2.5}$ mean or refer to fine particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(33) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (coarse particulate matter).

(34) The initials *PNG* mean or refer to pipeline natural gas.

(35) The initials *ppm* mean or refer to parts per million.

(36) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(37) The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.

(38) The initials *RMC* mean or refer to Regional Modeling Center.

(39) The initials *RP* mean or refer to Reasonable Progress.

(40) The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).

(41) The initials *RPOs* mean or refer to regional planning organizations.

(42) The initials *SCR* mean or refer to Selective Catalytic Reduction.

(43) The initials *SIP* mean or refer to State Implementation Plan.

(44) The initials *SNCR* mean or refer to Selective Non-catalytic Reduction.

(45) The initials SO_2 mean or refer to sulfur dioxide.

(46) The initials *SOFA* mean or refer to separated over fire air.

(47) The initials *SRP* mean or refer to Salt River Project Agricultural Improvement and Power District.

(48) The initials *tpy* mean tons per year.

(49) The initials *TSD* mean or refer to Technical Support Document.

(50) The initials *VOC* mean or refer to volatile organic compounds.

(51) The initials *WA* mean or refer to Wilderness Area.

(52) The initials *WEP* mean or refer to Weighted Emissions Potential.

(53) The initials *WFGD* mean or refer to wet flue gas desulfurization.

(54) The initials *WRAP* mean or refer to the Western Regional Air Partnership.

B. Docket

The proposed action relies on documents, information and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2012–0021. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI)). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:00 PDT, excluding Federal holidays.

C. Instructions for Submitting Comments to EPA

Written comments must be received at the address below on or before August 31, 2012. Submit your comments, identified by Docket ID No. EPA–R09–OAR–2011–0021, by one of the following methods:

- *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Arizona_Regional_Haze@epa.gov.*
- *Fax:* 415–947–3579 (Attention: Thomas Webb).
- *Mail, Hand Delivery or Courier:* Thomas Webb, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

EPA's policy is to include all comments received in the public docket without change. We may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or that is otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* we will include your email address 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 not include special characters or any form of encryption, and be free of any defects or viruses.

D. Submitting Confidential Business Information

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

E. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the identified comment period deadline.

F. Public Hearings

EPA will hold a public hearing at the date, time and location stated below to accept oral and written comments into the record.

Date: July 31, 2012.

Open House: 4:00–5:00 p.m.

Public Hearing: 6:00–8:00 p.m.

Location: Sandra Day O'Connor Federal Courthouse (atrium and juror room), 401 W. Washington Street, Phoenix, AZ 85003–2118.

To provide opportunities for questions and discussion, EPA will hold an open house prior to the public hearing. During the open house, EPA staff will be available informally to answer questions on our proposed rule. Any comments made to EPA staff during the open house must still be provided formally in writing or orally during a public hearing in order to be considered in the record.

The public hearing will provide the public with an opportunity to present views or information concerning the proposed Regional Haze FIP for Arizona. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Simultaneous translation in Spanish will be available during the public hearing. We will consider written statements and supporting information submitted during the comment period with the same weight as any oral comments and supporting information presented at the public hearing. Please consult section I.C, I.D. and I.E of this preamble for guidance on how to submit written comments to EPA. We will include verbatim transcripts of the hearing in the docket for this action. The EPA Region 9 Web site for the rulemaking, which includes the proposal and information about the public hearing, is at *http://www.epa.gov/region9/air/actions*.

II. Overview of Proposed Actions

EPA proposes to partially approve and partially disapprove a portion of Arizona's SIP for Regional Haze submitted to EPA Region 9 on February 28, 2011, to meet the requirements of Section 308 of the Regional Haze Rule. EPA is proposing to take action only on the BART requirements for the three electric generating stations and units listed in Table 1. At this time, EPA is not proposing to take action on the State's other BART determinations or any other parts of the SIP regarding the remaining requirements of the Regional Haze Rule. EPA takes very seriously a decision to disapprove a state plan, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act. Further, EPA's oversight role requires that it assure fair implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. In this instance, we believe that Arizona's SIP generally meets those requirements with respect to its SO_2 and PM_{10} limits, but as we describe in more detail below, the SIP does not include several specifically required elements. The NO_X BART determinations for the coal-fired units are neither consistent with the requirements of the Act nor with BART decisions that other states have made. As a result, EPA believes this proposed disapproval is the only path that is consistent with the Act at this time. Specifically, we propose the following:

• *Proposed Approval:* EPA proposes to approve Arizona's determination that the following sources and units are subject to BART: Arizona Electric Power Company's (AEPCO) Apache Generating Station (Apache) Units 1, 2 and 3; Arizona Public Service's (APS) Cholla Power Plant (Cholla) Units 2, 3 and 4; and Salt River Project's (SRP) Coronado Generating Station (Coronado) Units 1 and 2. We are proposing to approve the State's emissions limits for SO_2 and PM_{10} at all of these units, but are seeking comment on whether lower emissions limits may be warranted for any of these units, and whether an alternative test method should be accepted for measurement of PM_{10}. Finally, we are proposing to approve the emissions limits for NO_X, SO_2 and PM_{10} at Apache Unit 1.

• *Proposed Disapproval:* Based on our evaluation described in this notice, we propose to disapprove the State's BART emissions limits for NO_X at all three sources and units except for Coronado Unit 2 and Apache Unit 1. We also propose to disapprove the compliance and equipment maintenance requirements for BART at all three sources, since these were not included in the revised SIP.[2]

• *Proposed FIP:* We propose to promulgate a Federal Implementation Plan (FIP) that includes emissions limitations representing BART for NO_X at all units except for Apache Unit 1. The proposed FIP also includes compliance schedules and requirements for equipment maintenance, monitoring, testing, recordkeeping and reporting for all the sources and units. The regulatory language for the FIP requirements is listed under PART 52 at the end of this notice.

TABLE 1—SCOPE OF PROPOSED ACTION

Source name	Owner	Units	Pollutants
Apache Generating Station	AEPCO	Steam Units 1, 2 and 3	NO_X, SO_2, PM_{10}
Cholla Power Plant	APS	Steam Units 2, 3 and 4	NO_X, SO_2, PM_{10}
Coronado Generating Station	SRP	Units 1 and 2	NO_X, SO_2, PM_{10}

[2] For each BART source, the SIP must include a requirement to install and operate control equipment as expeditiously as practicable (40 CFR 51.308(e)(1)(iv)); a requirement to maintain control equipment (40 CFR 51.308(e)(1)(v)); and procedures to ensure control equipment is properly operated and maintained, including requirements for monitoring, recordkeeping and reporting (40 CFR 51.308(e)(1)(v)).

III. Regional Haze Background

A. Description of Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks (NPs) and wilderness areas (WAs). The average visual range [3] in many Class I areas (i.e., NPs and memorial parks, WAs, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions (64 FR 35715, July 1, 1999).

B. History of Regional Haze Regulations

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [4] which impairment results from manmade air pollution.'' EPA promulgated regulations on December 2, 1980, to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' (45 FR 80084, December 2, 1980). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

As part of the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714, July 1, 1999) codified at 40 CFR part 51, subpart P (Regional Haze Rule). The primary regulatory requirements that address regional haze are found at 40 CFR 51.308 and 51.309 and are summarized below. Under 40 CFR 51.308(b), all states, the District of Columbia and the Virgin Islands are required to submit an initial state implementation plan (SIP) addressing regional haze visibility impairment no later than December 17, 2007.[5]

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states, or the EPA when implementing a FIP, need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member State governments include: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

IV. Requirements for Regional Haze Implementation Plans

A. Regional Haze Rule

The Regional Haze Rule (RHR) sets out specific requirements for states' initial regional haze implementation plans.[6] In particular, each state's plan must establish a long-term strategy that ensures reasonable progress toward achieving natural visibility conditions in each Class I area affected by the emissions from sources within the state. In addition, for each Class I area within the state's boundaries, the plan must establish a reasonable progress goal (RPG) for the first planning period that ends on July 31, 2018. The long-term strategy must include enforceable emission limits and other measures as necessary to achieve the RPG. Regional haze plans must also give specific

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[5] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

[6] Pursuant to 40 CFR 51.301, ''implementation plan'' is defined as ''any State Implementation Plan, Federal Implementation Plan, or Tribal Implementation Plan.'' Therefore, although the requirements of the RHR are generally described in relation to SIPs, they are also relevant where EPA is promulgating a regional haze plan.

attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962. These sources, where appropriate, are required to install BART controls to eliminate or reduce visibility impairment. Although such BART determinations can be a part of a reasonable progress strategy, BART is also an independent requirement that can be assessed separately from the other requirements of the RHR. Because this proposal only pertains to BART at three specific sources, we do not discuss other requirements of the RHR below.

B. The Deciview

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction to deciviews using a logarithmic function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction because each deciview change is an equal incremental change in visibility as perceived by the human eye.[7]

C. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [8] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

EPA published the Guidelines for BART Determinations under the Regional Haze Rule at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') on July 6, 2005. The Guidelines are to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each such ''subject-to-BART'' source. In making BART determinations for fossil fuel-fired electric generating plants with a total generating capacity in excess of 750 megawatts, states must use the approach set forth in the BART Guidelines. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X and PM. EPA has indicated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. In setting their exemption threshold values, states should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. An exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described in the RHR as ''BART-eligible sources,'' and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance assigned to each factor, but must consider all five factors and provide a reasoned explanation for adopting the technology selected as BART, based on the five factors.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART, unless the SIP includes an alternative program that provides greater reasonable progress towards improving visibility than BART and meets the other requirements of 40 CFR 51.308(e)(2). Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date EPA approves the regional haze SIP.[9] The Regional Haze SIP must also contain a requirement for each BART source to maintain the relevant control equipment, as well as procedures to ensure control equipment is properly operated and maintained.[10] In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[11]

D. The Grand Canyon Visibility Transport Commission and Section 309

In addition to the general requirements of the regional haze program, the RHR also includes 40 CFR 51.309, which contains the strategies developed by the Grand Canyon Visibility Transport Commission (GCVTC), established under Section 169B(f) of CAA, 42 U.S.C. 7492(f). Certain western States and Tribes were eligible to submit implementation plans under section 309 as an alternative method of achieving reasonable progress for Class I areas that were covered by the GCVTC's analysis—i.e., the 16 Class I areas on the Colorado Plateau. In order for States and Tribes to be able to utilize this section, however, the rule provided that EPA must receive an ''Annex'' to

[7] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725 July 1, 1999).

[8] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

[9] CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv).

[10] 40 CFR 51.308(e)(1)(v). *See also* CAA section 302(k) (defining ''emission limitation'' as ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, *including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction* * * *'') (emphasis added).

[11] *See* CAA section 110(a)(2) (requirements for SIPs).

the GCVTC's final recommendations. The purpose of the Annex was to provide the specific provisions needed to translate the GCVTC's general recommendations for stationary source SO_2 reductions into an enforceable regulatory program. The rule provided that such an Annex, meeting certain requirements, be submitted to EPA no later than October 1, 2000, see 40 CFR 51.309(d)(4) and 51.309(f). The Annex was submitted in 2000, and EPA revised 40 CFR 51.309 in 2003. See 68 FR 33764, June 5, 2003.

V. SIP and FIP Background

A. History of State Submittals and EPA Actions

Since four of its twelve mandatory Class I Federal areas are on the Colorado Plateau, Arizona had the option of submitting a Regional Haze SIP under section 309 of the Regional Haze Rule. A SIP that is approved by EPA as meeting all of the requirements of section 309 is ''deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018.'' 40 CFR 51.309(a). When these regulations were first promulgated, 309 submissions were due no later than December 31, 2003. Accordingly, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA on December 23, 2003, a 309 SIP for Arizona's four Class I Areas on the Colorado Plateau. ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the state's regional haze statutes, on December 31, 2004. EPA approved the smoke management rules submitted as part of the 2004 revisions, *see* 71 FR 28270 and 72 FR 25973, but did not propose or take final action on any other portion of the 309 SIP.

In response to an adverse court decision,[12] EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes and requiring states to submit revised 309 SIPs by December 17, 2007. See 71 FR 60612. Subsequently, ADEQ sent a letter to EPA dated December 14, 2008, acknowledging that it had not submitted a SIP revision to address the requirements of 309(d)(4) related to stationary sources and 309(g), which governs reasonable progress requirements for Arizona's eight mandatory Class I areas outside of the Colorado Plateau.[13]

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze. See 74 FR 2392. Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the state of this failure to submit a complete SIP. ADEQ later decided to submit a SIP under section 308, instead of section 309.

ADEQ adopted and transmitted its Regional Haze SIP under Section 308 of the Regional Haze Rule (''Arizona Regional Haze SIP'') to EPA Region 9 in a letter dated February 28, 2011. The plan was determined complete by operation of law on August 28, 2011.[14] The SIP was properly noticed by the State and available for public comment for 30 days prior to a public hearing held in Phoenix, Arizona, on December 2, 2010. Arizona included in its SIP responses to written comments from EPA Region 9, the National Park Service, the U.S. Forest Service, and other stakeholders including regulated industries and environmental organizations. The Arizona Regional Haze SIP is available to review in the docket for the proposed rule.

B. EPA's Authority To Promulgate a FIP

Under CAA section 110(c), EPA is required to promulgate a Federal Implementation Plan within two years of the effective date of a finding that a state has failed to make a required SIP submission. The FIP requirement is void if a state submits a regional haze SIP, and EPA approves that SIP within the two-year period. See 74 FR 2392, January 15, 2009. Specifically, CAA section 110(c) provides:

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [CAA section 110(k)(1)(A)], or

(B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

> [A] plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances).

Thus, because we determined that Arizona failed to timely submit a Regional Haze SIP, we are required to promulgate a Regional Haze FIP for Arizona, unless we first approve a SIP that corrects the non-submittal deficiencies identified in our finding of January 15, 2009. For the reasons explained below, we are proposing to partially approve and partially disapprove the Arizona Regional Haze SIP. Therefore, we are proposing a FIP to address those portions of the SIP that we are proposing to disapprove. If Arizona submits a SIP revision that addresses the deficiencies in sufficient time for EPA to review the submission, then we would prefer to act on that submittal, if such action is consistent with our obligations under the CAA and applicable court orders.

VI. EPA's Evaluation of Arizona's BART Analyses and Determinations

A. Arizona's Identification of BART Sources

ADEQ's Analysis: In the first step of the BART process, ADEQ identified all the BART-eligible sources within the jurisdiction of the State and local agencies, and applied the three eligibility criteria in the RHR (40 CFR 51.301) to these facilities. The criteria are: (1) One or more emission units at the facility are classified in one of the 26 industrial source categories listed in the BART Guidelines; (2) the emission unit(s) did not operate before August 7, 1962, but was in existence on August 7, 1977; and (3) the total potential to emit of any visibility impairing pollutant from the subject emission units is greater or equal to 250 tons per year. ADEQ determined that Apache, Cholla and Coronado have emissions units that meet these criteria.

In a second step, ADEQ identified those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area. The BART Guidelines allow states to consider exempting some BART-eligible sources from BART review in the event that they may not

[12] *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Circuit 2005).

[13] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 14, 2008).

[14] See CAA section 110(k)(1)(B).

reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. Further, the BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' [15] The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' For determining whether a source is subject to BART, ADEQ used a contribution threshold of 0.50 dv.

The WRAP's Regional Modeling Center (RMC) developed a modeling protocol, entitled ''CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States.'' [16] The protocol specified the use of CALPUFF version 6.112 and CALMET version 6.211, which were the accepted model versions at the time.[17] The WRAP RMC used this protocol to perform CALPUFF modeling for each of the western states. ADEQ then relied on the RMC's modeling to assess the potential of BART-eligible sources to cause or contribute to Class I visibility impairment. The visibility impacts of AEPCO Apache Generating Station, APS Cholla Power Plant, and SRP Coronado Generating Station are each well above the 0.5 dv ''contribution'' threshold as well as the 1.0 dv ''causation'' threshold.[18] As a result, ADEQ determined that emissions units at the Apache, Cholla, and Coronado facilities are subject to BART as listed in Table 2.

TABLE 2—SOURCES SUBJECT TO BART

Facility	BART emission units	Source category	Pollutants evaluated	WRAP modeled impact [a]
AEPCO Apache Generating Station.	Units 1, 2, and 3	Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input.	NO_X, SO_2, PM_{10}	1.95 dv
APS Cholla Power Plant	Units 2, 3, and 4		NO_X, SO_2, PM_{10}	2.88 dv
SRP Coronado Generating Station.	Units 1 and 2		NO_X, SO_2, PM_{10}	3.32 dv

[a] Average of the 98th percentile across 2001, 2002 and 2003 for the most affected Class I Area.

EPA's Evaluation: We are proposing to approve ADEQ's determination that Apache, Cholla, and Coronado are eligible for and subject to a BART control analysis. Each of the three facilities addressed in this notice (Apache, Cholla and Coronado) agreed with ADEQ's determination that they are subject to BART. While we do not agree with all aspects of the process by which ADEQ identified its eligible-for-BART and subject-to-BART sources, we do agree with ADEQ that the three facilities in this notice are eligible for and subject to BART. Since our action today focuses on only the three facilities, we will address ADEQ's other subject-to-BART determinations in a separate action at a later date.

B. Arizona's BART Control Analysis

The third step of the BART evaluation is to perform a five-factor BART analysis as the basis for making a BART control determination. In performing this analysis, 40 CFR 51.308(e)(1)(ii)(A) requires that states consider the following factors on a pollutant-by-pollutant basis: (1) The costs of compliance of each technically feasible control technology, (2) the energy and non-air quality environmental impacts of compliance of the control technologies, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. These factors are frequently referred to as the ''five-factor analysis'' for the RHR BART determination.

The BART Guidelines recommend that a BART analysis include the following five steps. The Guidelines provide detailed instructions on how to perform each of these steps.[19]

- Step 1—Identify All Available Retrofit Control Technologies,
- Step 2—Eliminate Technically Infeasible Options,
- Step 3—Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4—Evaluate Impacts and Document the Results,[20] and
- Step 5—Evaluate Visibility Impacts.

ADEQ's Analysis: ADEQ's BART analyses mostly followed this approach, with the addition of a step to identify existing control technologies and a step concluding ''selection of BART.'' [21] Thus, ADEQ's analyses included the following seven steps:

- Step 1: Identify the Existing Control Technologies in Use at the Source
- Step 2: Identify All Available Retrofit Control Options
- Step 3: Eliminate All Technically Infeasible Control Options
- Step 4: Evaluate Control Effectiveness of Remaining Technologies
- Step 5: Evaluate the Energy and Non-Air Quality Environmental Impacts and Document Results [22]
- Step 6: Evaluate Visibility Impacts
- Step 7: Select BART

EPA's Evaluation: We find that this overall approach to the five-factor analysis is generally reasonable and consistent with the RHR and the BART Guidelines. With respect to the three

[15] 70 FR 39104, 39161, July 6, 2005.

[16] See Docket Item B–15.

[17] EPA subsequently required the uses of CALPUFF and CALMET version 5.8 for new modeling applications. However, EPA is accepting BART modeling performed according to a previously approved protocol, as was the case for the WRAP protocol.

[18] See Docket Item No. B–12. Visibility impacts as listed in ''Summary of WRAP RMC BART Modeling for Arizona'' Draft No. 5, May 7, 2005. Initial draft released on April 4, 2005.

[19] 40 CFR part 51, appendix Y, § IV.D.

[20] Step 4 includes evaluating the cost of compliance, energy impacts, non-air quality environmental impacts, and remaining useful life.

[21] Arizona Regional Haze SIP, pp. 138–143.

[22] We note that, while ADEQ refers to its Step 5 as an evaluation of energy and non-air quality environmental impacts, this step also includes consideration of the costs of compliance and the remaining useful life of the source, consistent with the BART Guidelines, 40 CFR part 51, appendix Y, § IV.D.4.

sources covered by this action, we find that ADEQ's implementation of the first four steps of its approach is generally reasonable and consistent with the RHR and the BART Guidelines. However, we do not agree with ADEQ's analysis in steps 5 through 7.[23] In particular, under step 5, we find that the costs of control were not calculated in accordance with the BART Guidelines; under step 6, we find that the visibility impacts were not appropriately evaluated and considered; and under step 7, we find that ADEQ did not provide a sufficient explanation and rationale for its determinations. While we find these problems in all of ADEQ's BART analyses for the three sources, they do not appear to have had a substantive impact on ADEQ's selection of controls for SO_2 and PM_{10}. With respect to ADEQ's NO_X BART determinations, however, we find that these problems resulted in control determinations that are inconsistent with the RHR and the BART Guidelines. We summarize below how ADEQ applied the five factors and identify a number of issues common to the three relevant sources.

1. Cost of Compliance

ADEQ included information relating to costs of compliance in its RH SIP, including information on total annualized costs, cost per ton of pollutant removed, and incremental cost per ton of pollutant removed for the various control options considered. Cost calculations were prepared by consulting firms on behalf of the facilities as part of their BART analyses that relied on a combination of vendor quotes, facility data, and internal cost calculation methodology. These BART analyses were subsequently submitted to ADEQ. Upon review, ADEQ requested certain clarifying information from the facilities regarding these cost calculations, including greater detail on the underlying assumptions and additional supporting documentation. ADEQ received responses of varying detail to these requests, and included this information as part of its RH SIP. As described in further detail in the discussion of each facility, there are certain aspects of these cost calculations that we find inconsistent with the BART Guidelines and EPA's Control Cost Manual. We also disagree with the manner in which ADEQ interpreted the cost-related information included in its RH SIP.

2. Energy and Non-Air Quality Environmental Impacts

In its BART analyses, ADEQ identified only minor energy and non-air quality impacts for SO_2 or PM_{10} control strategies. Regarding NO_X emissions, ADEQ's BART analyses point out that the various control options will incur increased energy usage by any electric generating unit (EGU) where they are installed. In particular, Selective Catalytic Reduction (SCR) retrofit will cause an additional pressure drop in the flue gas system due to the catalyst, increasing power requirements. Additionally, ADEQ's SIP submission asserts that ammonia levels in fly ash due to Selective Non-catalytic Reduction (SNCR) and SCR installations could affect the decision of facility managers to sell or dispose of fly ash.[24] Finally, the Arizona SIP notes that SNCR and SCR may involve potential safety hazards associated with the transportation and handling of anhydrous ammonia.[25] However, ADEQ did not cite any of these potential energy and non-air impacts as the basis for eliminating any otherwise feasible control strategies for NO_X. EPA concurs that these impacts do not warrant elimination of any of the control options.

3. Existing Pollution Control Technology

The presence of existing pollution control technology is reflected in the BART analysis in two ways: First, in the consideration of available control technologies (step 1 of ADEQ's analysis), and second, in the development of baseline emission rates for use in cost calculations and visibility modeling (steps 5 and 6 of ADEQ's analysis). As described in greater detail in the discussion for each facility, AEPCO, APS, and SRP used baseline time periods that varied from 2001 to 2007. The respective baseline emissions and existing pollution control technology used in the BART analyses reflect the levels of control in place at the time. EPA considers ADEQ's approach to be reasonable and generally consistent with the RHR and the BART Guidelines.

4. Remaining Useful Life of the Source

The remaining useful life of the source is usually considered as a quantitative factor in estimating the cost of compliance. With the exception of Apache Generating Station Unit 1, ADEQ used the default 20-year amortization period in the EPA Cost Control Manual as the remaining useful life of the facilities in its RH SIP. Without commitments for an early shut down of an EGU, it is not appropriate to consider a shorter amortization period in a BART analysis.

5. Degree of Visibility Improvement

ADEQ assessed the degree of improvement in visibility from candidate BART technologies using models and procedures generally in accord with EPA guidance. ADEQ relied on visibility analysis performed by the facilities, which used the WRAP RMC's modeling protocol. However, ADEQ's use of the modeling results in making BART decisions is problematic in several respects. First, ADEQ appears to have considered the visibility benefit of controls at only a single Class I area for each facility, even though there are nine to seventeen Class I areas nearby, depending on the facility. Since the facilities' modeling results indicated that controls would contribute to visibility improvement in multiple Class I areas, consideration of the benefits in additional areas is warranted. Although the RHR and the BART Guidelines do not prescribe a particular approach to calculating or considering visibility benefits across multiple Class I areas, overlooking significant visibility benefits at additional areas considerably understates the overall benefit of controls to improve visibility. A more complete assessment of the degree of visibility improvement for candidate BART controls would include consideration of the number of areas affected and the degree of visibility improvement expected in all areas. One could conduct this type of analysis by summing the benefits over the areas, or by some other quantitative or qualitative procedure.[26] The procedure followed by ADEQ is not a sufficient basis for making BART determinations for sources with substantial benefits across many Class I areas.

Second, ADEQ appears to have considered benefits from controls on only one emitting unit at a time. However, because the plumes from individual units overlap more or less completely by the time they reach a

[23] We do not believe that ADEQ appropriately used ''the most stringent emission control level that the technology is capable of achieving'' for SCR per the BART Guidelines at 40 CFR part 51, appendix Y, § IV.D.3. This issue is addressed on a source-by-source basis under the cost and visibility factors of our evaluation in section VI.C.

[24] Arizona Regional Haze SIP, Appendix D, p. 63.

[25] See, e.g. *id.* p. 53.

[26] Note that the issue here is not whether an individual in a given time and place would perceive the deciview benefits occurring at different Class I areas and under possibly different meteorological conditions. Rather, the issue is accounting in some way for the full set of expected visibility benefits. A national program for addressing regional haze must inherently address the multiple areas that occur in a region.

Class I area, the visibility benefits from controls on multiple units would be approximately additive. This issue of additive unit benefits could be addressed in some way without modeling all the units together, but ADEQ does not appear to have done this, and therefore underestimated the degree of visibility improvement from controls.

Finally, the ammonia background concentration assumed for Cholla and Coronado may be too low, ranging from 1 ppb to as low as 0.2 ppb. Nitrogen oxides and SO_2 emissions affect visibility after chemically transforming into particulate ammonium nitrate and ammonium sulfate, respectively. This process is limited by the amount of ammonia present, so modeling with a low assumed ammonia background may underestimate visibility impacts and thus the visibility benefit of controls. Ambient ammonia measurements for use as input to modeling are scarce, and measurements that include it in the form of ammonium even scarcer. In the absence of compelling ammonia background estimates, EPA guidance recommends the use of a 1 ppb ammonia background for areas in the west.[27]

C. Arizona's BART Determinations

Our evaluation of ADEQ's BART determinations is organized by source, unit and pollutant with a focus on the cost and visibility factors of the BART analysis. A summary of the State's BART determinations for the three sources is in Table 3. ADEQ's BART determinations for NO_X consist of combustion controls, either in the form of low-NO_X burners (LNB) with flue gas recirculation (FGR), or LNB with overfire air (OFA) or separated overfire air (SOFA). For PM_{10}, ADEQ's BART determinations consist of fuel switching to pipeline natural gas (PNG) for Apache Unit 1, and add-on particulate controls such as electrostatic precipitators (ESPs) or fabric filters for the remaining units. For SO_2, ADEQ's BART determinations consist of fuel-switching to PNG for Apache Unit 1, and wet flue gas desulfurization (FGD) systems that are either already in place or planned for the remaining units.

TABLE 3—SUMMARY OF ARIZONA'S BART DETERMINATIONS

Unit	Size (MW)	Fuel	NO_X		PM_{10}		SO_2	
			Control technology	Emission limit *	Control technology	Emission limit *	Control technology	Emission limit *
Apache 1	75	Natural Gas	LNB w/FGR, PNG use	0.056	PNG use	0.0075	PNG use	0.00064
Apache 2	195	Coal	LNB w/OFA	0.31	ESP (upgraded)	0.03	Wet FGD (existing)	0.15
Apache 3	195	Coal	LNB w/OFA	0.31	ESP (upgraded)	0.03	Wet FGD (existing)	0.15
Cholla 2	305	Coal	LNB w/SOFA	0.22	Fabric filter	0.015	Wet FGD (existing)	0.15
Cholla 3	305	Coal	LNB w/SOFA	0.22	Fabric filter (existing)	0.015	Wet FGD (existing)	0.15
Cholla 4	425	Coal	LNB w/SOFA	0.22	Fabric filter (existing)	0.015	Wet FGD (existing)	0.15
Coronado 1	411	Coal	LNB w/OFA	0.32	Hot-side ESP	0.03	Wet FGD (per Consent Decree).	0.08
Coronado 2	411	Coal	LNB w/OFA	0.32	Hot-side ESP	0.03	Wet FGD (per Consent Decree).	0.08

* Emission limits are in lb/MMBtu.

1. Apache Unit 1

Apache Generating Station (Apache) consists of seven EGUs with a total plant-wide generating capacity of 560 megawatts. Unit 1 is a wall-fired boiler with a net unit output of 85 MW that burns pipeline-quality natural gas as its primary fuel, but also has the capability to use No. 2 through No. 6 fuel oils. At present, no emissions control equipment is installed on Unit 1. ADEQ's BART analyses for Apache Unit 1 relied largely on data and analyses provided by AEPCO and its contractor. These data and analyses are summarized below, along with ADEQ's determinations for each pollutant and EPA's evaluations of these analyses and determinations.

a. BART for NO_X

ADEQ's Analysis: Unit 1 currently operates with no NO_X controls. In its BART analysis submitted to ADEQ, AEPCO developed baseline emissions for multiple fuel-use scenarios including natural gas, and No. 2 and No. 6 fuel oil usage. Baseline natural gas emissions were based on the highest 75 percent load 24-hour NO_X emission levels reported in EPA's Acid Rain Database for 2006. Since the only fuel burned in 2006 was natural gas, baseline emissions for No. 2 or No. 6 fuel oil usage could not be developed based on data from 2006. As a simplifying assumption, baseline No. 2 fuel oil NO_X emissions were assumed to be equal to natural gas usage. Baseline emissions for No. 6 fuel oil usage were estimated using AP–42 emission factors.[28] A summary of baseline emissions for various fuels is provided in Table 4.

TABLE 4—APACHE UNIT 1: ARIZONA'S BASELINE EMISSION FACTORS [a]

Pollutant	Natural Gas (lb/MMBtu)	No. 2 Fuel oil	No. 6 fuel oil
NO_X	0.147	0.147	0.301
PM_{10}	0.0075	0.014	0.0737
SO_2	0.00064	0.051	0.906

[a] See Docket Item B–02 (Table 3–1 of AEPCO Apache 1 BART Analysis).

[27] Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts (EPA–454/R–98–019), EPA OAQPS, December 1998, *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf.*

[28] See Docket Item B–2. Page 2–1 of AEPCO Apache 1 BART Analysis.

AEPCO examined multiple control technologies and options for Apache Unit 1, including combustion controls, post combustion add-on controls, and fuel-switching. A summary of cost of compliance and degree of visibility improvement for these options is in Table 5. These cost and visibility improvement values are based on baseline and control case emissions corresponding to No. 6 fuel oil usage, which of the three fuels considered is the fuel type that generates the greatest NO_X emissions.

TABLE 5—APACHE UNIT 1: ARIZONA'S COST AND VISIBILITY ANALYSIS FOR NO_X

Control option [b]	Emission rate (lb/MMBtu)	Emissions removed (tons/yr)	Annualized cost ($/year)	Cost-effectiveness [d] ($/ton)		Visibility Improvement [c] (dv)	
				Average	Incremental (from previous)	Total (from base case)	Incremental (from previous)
Baseline	0.301	.....	.....	.....	.....	.....	.....
LNB + FGR	0.15	297	551,982	1,859	.....	0.194	.....
ROFA	0.16	278	939,093	3,378	−20,374	0.256	0.062
SNCR with LNB + FGR	0.11	376	1,079,389	2,871	1,432	0.24	−0.016
ROFA w/Rotamix	0.11	376	1,505,825	4,005	[a] NA	0.24	[a] NA
SCR with LNB + FGR	0.07	455	5,704,798	12,538	53,152	0.409	0.169

[a] The previous option, SNCR with LNB + FGR has the same emission rate, making an incremental comparison invalid.
[b] Per ADEQ's and AEPCO's analyses, control options are ranked here by cost, not by emission rate
[c] Visibility improvement at Chiricahua Wilderness Area, the Class I area exhibiting the highest impact
[d] Cost-effectiveness values obtained from Table 10.3, Appendix D (TSD) of Arizona RH SIP. See Docket Item B–01.

In its cost calculations for Apache Unit 1, AEPCO used a capital recovery factor based on a 7.10 percent interest rate, and a plant remaining useful life of eight years.[29] The plant's remaining useful life was based upon Apache Unit 1 operating until 2021, and an assumed BART implementation date of 2013.[30] AEPCO eliminated many control options, including SCR, based on high cost-effectiveness ($/ton), and primarily examined the LNB w/FGR and ROFA control options. AEPCO noted that LNB with FGR resulted in larger incremental visibility improvement than ROFA, and proposed LNB with FGR, burning either natural gas or fuel oil, as BART for NO_X at Apache Unit 1.

In order to evaluate AEPCO's BART analysis, ADEQ requested supporting information explaining assumptions used in the economic analysis, baseline emissions, and control technology options. Based on this additional information, as well as on AEPCO's original analysis, ADEQ accepted the company's proposed BART recommendation of LNB with FGR for Unit 1, but added a fuel restriction to allow only the use of natural gas. This determination corresponds to a BART emission limit for NO_X at Apache Unit 1 of 0.056 lb/MMBtu.[31]

EPA's Evaluation: We disagree with multiple aspects of the analysis for Apache Unit 1. We consider the use of eight years for the plant's remaining useful life in the control cost calculations as unjustified in the absence of documentation that the unit will shut down in 2021. We also note that control cost calculations include costs that are disallowed by EPA's Control Cost Manual, such as owner's costs and AFUDC. Both of these elements have the effect of inflating cost calculations and thus the cost-effectiveness of the various control options considered. In addition, we do not consider using identical baseline emissions for No. 2 fuel oil and natural gas appropriate, although this likely did not affect either AEPCO's or ADEQ's BART determination, which was informed primarily by emission estimates based on No. 6 fuel oil, the highest emitting fuel.

By including a natural gas-only fuel restriction, ADEQ's BART determination of LNB with FGR results in a NO_X emissions limit of 0.056 lb/MMBtu, which is more stringent than any of the control options that AEPCO and ADEQ considered in conjunction with No. 6 or No. 2 fuel oil. Neither AEPCO's nor ADEQ's analysis, however, included visibility modeling for control options on a natural gas-only basis. The absence of such information does not allow us to fully evaluate if options more stringent than LNB with FGR are appropriate on a natural gas-only basis. Nevertheless, we are proposing to approve ADEQ's NO_X BART determination of LNB with FGR (natural gas usage only) with an emission limit of 0.056 lb/MMBtu for Apache Unit 1.

b. BART for PM_{10}

ADEQ's Analysis: Apache Unit 1 currently operates with no PM_{10} controls. In its BART analysis submitted to ADEQ, AEPCO developed baseline emissions for multiple fuel use scenarios including natural gas, and No. 2 and No. 6 fuel oil usage. Baseline PM_{10} emissions for all fuels were calculated based on AP–42 emission factors.[32] A summary of these emissions is in Table 4.

AEPCO examined multiple control options for PM_{10} at Apache Unit 1, including add-on controls and fuel switching. A summary of cost of compliance and degree of visibility improvement for these options is summarized in Table 6. These cost and visibility improvement values are based on baseline and control case emissions corresponding to No. 6 fuel oil usage, which of the three fuels considered generates the greatest PM_{10} emissions. In its BART analysis, AEPCO cited high costs of compliance and minimal visibility improvements for the PM_{10} control options, and proposed no PM_{10} controls as BART for PM_{10}, using either natural gas or No. 2 fuel oil. Based on the data and analysis provided by AEPCO, ADEQ determined that BART for PM_{10} at Apache Unit 1 is no additional controls, but also determined that a fuel restriction to allow only the use of natural gas was appropriate. This corresponds to a PM_{10} BART emission

[29] See Docket Item B–02. Appendix A (Economic Analysis) of AEPCO Apache 1 BART Analysis.
[30] See Docket Item B–02. Page 2–1 of AEPCO Apache 1 BART Analysis.
[31] See Docket Item B–01. Emission rate as specified in Table 10.2, Appendix D (Technical Support Document) of Arizona Regional Haze SIP.
[32] See Docket Item B–02, Page 2–1 of AEPCO Apache 1 BART Analysis.

limit for Apache Unit 1 of 0.0075 lb/MMBtu.[33]

TABLE 6—APACHE UNIT 1: ARIZONA'S COST AND VISIBILITY ANALYSIS FOR PM_{10}

Control option	Emission rate (lb/MMBtu)	Emissions removed (tons/yr)	Annualized cost ($/year)	Cost-effectiveness [a] ($/ton)		Visibility Improvement [b] (dv)	
				Average	Incremental (from previous)	Total (from base case)	Incremental (from previous)
Baseline	0.0737	.....	.....	.....	.....	.....	.....
Fabric Filter	0.015	116	3,615,938	31,172	.....	0.010	.....
Fuel switch to PNG	0.0075	.....	0	.....	.....	.....	.....

[a] Cost-effectiveness values as reported in Table 10.6, Appendix D (TSD) of Arizona RH SIP. See Docket Item B–01.
[b] As summarized in Table 5–12, AEPCO Apache 1 BART Analysis. See Docket Item B–02. Visibility improvement at Chiricahua Wilderness Area, the Class I area exhibiting the highest impact.

EPA's Evaluation: ADEQ's PM_{10} analysis includes many of the same issues we noted in its NO_X analysis, including the use of an eight-year plant remaining useful life, and inclusion of costs that are disallowed by EPA's Control Cost Manual. Although we do not agree with elements of ADEQ's PM_{10} BART analysis for Apache Unit 1, we find that its conclusion is reasonable, given the small visibility improvement projected to result from PM_{10} reductions at this Unit. Thus, we are proposing to approve ADEQ's PM_{10} BART determination for Apache Unit 1.

c. BART for SO_2

ADEQ's Analysis: Apache Unit 1 currently operates with no SO_2 controls. In its BART analysis submitted to ADEQ, AEPCO developed baseline emissions for multiple fuel use scenarios including natural gas, and No. 2 and No. 6 fuel oil. Baseline natural gas emissions were based upon the highest 75 percent load 24-hour SO_2 emission levels reported in EPA's Acid Rain Database for 2006. Since the only fuel burned in 2006 was natural gas, baseline emissions for No. 2 or No. 6 fuel oil usage could not be developed based on data from 2006. Baseline emissions for No. 2 and No. 6 fuel oil usage were estimated using AP–42 emission factors.[34] A summary of these emissions is summarized in Table 4.

AEPCO also examined multiple control options for SO_2 on Apache 1, including add-on controls and fuel-switching. A summary of cost of compliance and degree of visibility improvement for these options is summarized in Table 7. These cost and visibility improvement values are from baseline and control case emissions corresponding to No. 6 fuel oil usage, which is the fuel type that generates the greatest SO_2 emissions. In its BART analysis, AEPCO cited high costs of compliance and minimal visibility improvements for the SO_2 control options, and proposed no additional SO_2 controls, using either natural gas or No. 2 fuel oil, as BART for SO_2. ADEQ determined that BART for SO_2 is no additional controls, but added a fuel restriction to allow only the use of natural gas. This corresponds to an SO_2 BART emission limit for Apache Unit 1 of 0.00064 lb/MMBtu.[35]

TABLE 7—APACHE UNIT 1: ARIZONA'S COST AND VISIBILITY ANALYSIS FOR SO_2

Control option	Emission rate (lb/MMBtu)	Emissions removed (tons/yr)	Annualized cost ($/year)	Cost-effectiveness [a] ($/ton)		Visibility Improvement [b] (dv)	
				Average	Incremental (from previous)	Total (from base case)	Incremental (from previous)
Baseline	0.906	.....	.....	.....	.....	.....	.....
Fuel switch to low-sulfur fuel oil	0.051	.....	.....	.....	.....	.....	.....
Spray dryer absorber (dry FGD) [1]	0.10	1,587	3,881,706	2,446	.....	0.765	.....
Fuel switch to PNG	0.00064	.....	0	.....	.....	.....	.....

[a] Cost-effectiveness values as reported in Table 10.8, Appendix D (TSD) of Arizona RH SIP. See Docket Item B–01.
[b] As summarized in Table 5–12, AEPCO Apache 1 BART Analysis. See Docket Item B–02. Visibility improvement at Chiricahua Wilderness Area, the Class I area exhibiting the highest impact.

EPA's Evaluation: The SO_2 analysis includes many of the same issues we noted in the NO_X analysis, including the use of an eight-year plant remaining useful life, and inclusion of costs that are disallowed by EPA's Control Cost Manual. ADEQ's BART determination, requiring the use of only natural gas, results in an SO_2 emission limit of 0.00064 lb/MMBtu. This emission rate is more stringent than any of the control options that ADEQ considered in conjunction with No. 6 fuel oil. We are proposing to approve ADEQ's BART determination for SO_2 as an emission limit of 0.00064 lb/MMBtu at Apache Unit 1.

2. Apache Units 2 and 3

Apache Units 2 and 3 are both dry-bottom, Riley Stoker turbo-fired boilers, each with a gross unit output of 204 MW. Both units are BART-eligible and are coal-fired boilers operating on sub-bituminous coal. Although there are physical differences between the two units, ADEQ found that the overall

[33] See Docket Item B–01. Emission rate as specified in Table 10.5, Appendix D (Technical Support Document) of Arizona Regional Haze SIP.

[34] See Docket Item B–02. Page 2–2 of AEPCO Apache 1 BART Analysis.

[35] See Docket Item B–01. Emission rate as specified in Table 10.7, Appendix D (Technical Support Document) of Arizona Regional Haze SIP.

differences are minimal and therefore considered both units together in its BART analysis. As with Apache Unit 1, ADEQ's analysis relied largely on information provided by AEPCO and its contractor. This information is summarized below, along with ADEQ's determinations for each pollutant and EPA's evaluation.

While the following sections describe both ADEQ's and EPA's evaluations based on the information in the record, we note that we received additional information from AEPCO on June 29, 2012, related to the potential adverse impacts of the affordability of NO_X controls. AEPCO states that affordability is affected by its small size, the low income profiles of AEPCO's service area, and AEPCO's ability to access financing. While this information came in too late to be evaluated as part of this proposed rulemaking, EPA has put the information in the docket and will evaluate it during the public comment period.[36]

a. BART for NO_X

ADEQ's Analysis: AEPCO developed baseline NO_X emissions by examining the average NO_X emissions from 2002 to 2007, a time period in which both units were equipped with OFA as NO_X emission controls.[37] AEPCO examined several NO_X control technologies, including combustion controls and add-on post-combustion controls. A summary of Arizona's costs of compliance and visibility impacts associated with these options is presented in Table 8. ADEQ relied on this information from the facility to develop its RH SIP.[38] Estimates of control technology emission rates were developed based on a combination of vendor quotes, contractor information, and internal AEPCO information regarding environmental upgrades.[39] Annual emission reductions were calculated based on the emission rate estimates combined with annual capacity factors as specified by AEPCO.[40] Control costs were developed based on a combination of vendor quotes and contractor information. These cost calculations provided line item summaries of capital costs and annual operating costs, but did not include further supporting information such as detailed equipment lists, vendor quotes, or the design basis for line item costs.

TABLE 8—APACHE UNITS 2 AND 3: ARIZONA'S COST AND VISIBILITY SUMMARY

Control option	Emission rate (lb/MMBtu)	Emissions removed (tons/yr)	Annualized cost ($/year)	Cost-effectiveness ($/ton)		Visibility improvement [a] (deciviews)		Cost per total deciview improvement ($/dv)
				Average	Incremental (from previous)	Total (from baseline)	Incremental (from previous)	
Apache Unit 2								
OFA (baseline)	0.47	.....	.....	.....	.....	.....	.....	.....
LNB + OFA	0.31	1,305	$533,000	$408	.....	0.267	.....	$1,996,000
ROFA	0.26	1,710	1,664,000	973	305	0.359	0.092	4,636,000
SNCR + LNB + OFA	0.23	1,953	1,738,000	890	1,860	0.416	0.057	4,532,000
ROFA w/Rotamix	0.18	2,358	2,225,000	944	866	0.491	0.075	4,177,000
SCR + LNB + OFA	0.07	3,250	6,102,000	1,878	4,346	0.676	0.185	9,028,000
Apache Unit 3								
OFA (baseline)	0.43	.....	.....	.....	.....	.....	.....	.....
LNB + OFA	0.31	926	532,808	575	.....	0.206	.....	2,586,000
ROFA	0.26	1,312	1,643,241	1,252	322	0.298	0.092	5,484,000
SNCR + LNB + OFA	0.23	1,543	1,717,633	1,113	1,920	0.356	0.058	5,004,000
ROFA w/Rotamix	0.18	1,929	2,181,833	1,131	873	0.436	0.080	4,825,000
SCR + LNB + OFA	0.07	2,778	6,062,301	2,182	4,571	0.633	0.197	9,577,000

[a] At the Class I area exhibiting the greatest baseline visibility impact, Chiricahua Wilderness Area.

Regarding visibility impacts, ADEQ relied on visibility modeling submitted by AEPCO to evaluate the visibility improvement attributable to each of the NO_X control technologies that it considered. This visibility modeling was performed using three years of meteorological data (2001 to 2003), and was generally performed in accordance with the WRAP modeling protocol. The average of the three 98th percentiles from the modeled years 2001 to 2003 was used as the visibility metric for each emission scenario and Class I area. For assessing the degree of visibility improvement, ADEQ considered only the visibility benefits at the area with the highest base case (pre-control) impact: Chiricahua National Monument and Chiricahua Wilderness Area (two nearby Class I areas served by one air monitor). For each control, ADEQ listed visibility improvement in deciviews, and cost in millions of dollars per deciview improvement.[41] Results are comparable for both units, with Unit 2 showing somewhat higher visibility benefits and somewhat lower cost per improvement than Unit 3. Unit 2 visibility improvements range from 0.27 dv for LNB to 0.68 dv for SCR, while the costs per deciview range from $2 million for LNB to over $9 million for SCR. ADEQ concluded that LNBs with the existing OFA systems represent BART for Units 2 and 3, though no explicit reasoning is provided for the selection.

ADEQ determined that LNB plus OFA constitute BART for NO_X at Apache Units 2 and 3. In making this determination, ADEQ did not provide adequate information regarding its rationale or weighing of the five factors. ADEQ stated only that ''(A)fter reviewing the company's BART analysis, and based upon the information above, ADEQ has

[36] See Docket Item C–16, Letter from Michelle Freeark (AEPCO) to Deborah Jordan (EPA), AEPCO's Comments on BART for Apache Generating Station, June 29, 2012.

[37] See Docket Item B–03 and B–04, AEPCO Apache BART Analyses, page 2–2.

[38] See Docket Item B–03 and B–04, AEPCO Apache BART Analyses. This information is also summarized in Docket Item B–01, Arizona Regional Haze SIP, Appendix D, Tables 10.10 through 10.13.

[39] As listed in Table 3–2, Docket Items B–03 and B–04, AEPCO Apache BART Analyses.

[40] As listed in Table 2–1, Docket Items B–03 and B–04. Annual capacity factors used for each unit are 92% (Apache 2), and 87% (Apache 3).

[41] Arizona SIP submittal, ''Appendix D: Arizona BART—Supplemental Information'', p. 65.

determined that, for Units 2 and 3 BART for NO_X is new LNBs and the existing OFA system with a NO_X emissions limit of 0.31 lb/MMBtu * * *.'' [42]

EPA's Evaluation: We disagree with several aspects of the NO_X BART analysis for Apache Units 2 and 3. The control cost calculations included line item costs not allowed by the EPA Control Cost Manual, such as owner's costs, surcharge, and AFUDC. Inclusion of these line items has the effect of inflating the total cost of compliance and the cost per ton of pollutant reduced.

Regarding visibility improvement as shown in Table 8, ADEQ chose LNB as BART, which provides the lowest visibility benefit of any of the controls modeled. By contrast, SCR would provide an improvement of more than 0.5 dv at a single Class I Area, and a substantial incremental benefit relative to the next more stringent control, ROFA-Rotamix. Multiple Class I areas have comparable benefits. The visibility benefits are larger than those listed, if both Units 2 and 3 are considered together. (See Table 17 below for EPA's visibility results.) The SCR cost per deciview of improvement is lower than those for Cholla and Coronado, as indicated below in their respective sections.

ADEQ provides little explicit reasoning about the visibility basis for the BART selection. For example, there is no weighing of visibility benefits and visibility cost-effectiveness for the various candidate controls and the various Class I areas. The modeling results show that controls more stringent than LNB appear to be needed to give substantial visibility benefits. Visibility impacts at eight nearby Class I areas were not considered, and the visibility benefits of simultaneous controls on both units were not considered. For these reasons, EPA believes that ADEQ gave insufficient consideration to the visibility benefits of the various NO_X control options available at Apache Units 2 and 3.

In summary, we find that ADEQ has not provided an adequate justification for adopting LNB with OFA as the ''best'' level of control.[43] Although ADEQ has developed information regarding each of the five factors, there are problems in both its cost and visibility analyses as described above. Moreover, ADEQ's BART analysis does not explain how it weighed these factors. For example, ADEQ did not indicate whether or not it considered any cost thresholds to be reasonable or expensive in analyzing the costs of compliance for the various control options. We note that ADEQ has made similar NO_X BART determinations of LNB with OFA at other facilities, such as Cholla Power Plant. Although ADEQ's BART determinations for these other facilities implied that cost of compliance was an important consideration, it does not provide a rationale for this selection of NO_X BART.[44] Thus, we are proposing to disapprove ADEQ's BART determination for NO_X at Apache Units 2 and 3, since it does not comply with 40 CFR 51.308(e)(1)(ii)(A).

b. BART for PM_{10}

ADEQ's Analysis: The existing PM_{10} controls on Apache Units 2 and 3 are hot-side Electrostatic Precipitators (ESPs).[45] AEPCO and ADEQ considered three potential retrofit control options for PM_{10}:

- Performance upgrades to existing hot-side ESP,
- Replacement of current ESP with a fabric filter, and
- Installation of a polishing fabric filter after ESP.

ADEQ found that all of these options are technically feasible and estimated their associated emission rates as shown in Table 9.

TABLE 9—APACHE UNITS 2 AND 3: ARIZONA'S CONTROLS AND EMISSION RATES FOR PM_{10}

Control technology	Expected PM_{10} emission rate
ESP Upgrades	0.03 lb/MMBtu.
Full Size Fabric Filter	0.015 lb/MMBtu.
Polishing Fabric Filter	0.015 lb/MMBtu.

ADEQ found that a fabric filter, whether in addition to or as replacement for the ESP, would require additional energy, but did not identify any non-air environmental impacts from any of the three options. The cost of compliance and degree of visibility improvement for each of these options, as analyzed by ADEQ, are summarized in Tables 10 and 11.

TABLE 10—APACHE UNIT 2: ARIZONA'S CONTROL COST OF VISIBILITY REDUCTION FOR PM_{10}

Control	Deciview reduction	Total annualized cost (million $)	Cost per deciview reduced (million $/dv)	Average cost ($/ton)
ESP Upgrades	Unknown	Unknown	Unknown	Unknown
Polishing Fabric Filter	0.085	$2.217	$26.09	$9,121
Full Size Fabric Filter	0.085	2.888	33.98	11,880

TABLE 11—APACHE UNIT 3: ARIZONA'S CONTROL COST OF VISIBILITY REDUCTION FOR PM_{10}

Control	Deciview reduction	Total annualized cost (million $)	Cost per deciview reduced (million $/dv)	Average cost ($/ton)
ESP Upgrades	Unknown	Unknown	Unknown	Unknown
Polishing Fabric Filter	0.094	$2.192	$23.32	$9,471
Full Size Fabric Filter	0.094	$2.869	$30.52	12,390

[42] Docket Item B–01, Arizona Regional Haze SIP, Appendix D, Page 65.

[43] See BART Guidelines, § IV.E.2.

[44] We do note, however, that AEPCO does provide some additional analysis on this position in the Apache BART analyses it submitted to ADEQ. Aside from stating that it reviewed AEPCO's analysis, ADEQ did not specifically reference or include any aspects of AEPCO's analysis in the RH SIP. As a result, we are not assuming that ADEQ necessarily agrees with AEPCO's rationale, and have therefore not provided an evaluation of it.

[45] See Appendix D, pages 65–69 for ADEQ's BART Analysis for PM_{10} at Apache Units 2 and 3. See AEPCO Apache Unit 2 BART Analysis.

Based on its analysis of the five BART factors, as summarized above, ADEQ found BART for PM_{10} is upgrades to the existing ESP and a PM_{10} emissions limit of 0.03 lb/MMBtu for Units 2 and 3. In particular, ADEQ referred to installation of a flue gas conditioning system, improvements to the scrubber bypass damper system, and implementation of programming optimization measures for ESP automatic voltage controls as potential upgrades. ADEQ also noted that ''PM_{10} emissions will be measured by conducting EPA Method 201/202 tests.''

EPA's Evaluation: As noted above, AEPCO's and ADEQ's control cost calculations include costs that are disallowed by EPA's Control Cost Manual, such as owner's costs and AFUDC.[46] In addition, AEPCO's and ADEQ's analyses do not demonstrate that all potential upgrades to the existing ESP were fully evaluated. Nonetheless, based on the small visibility improvement associated with PM_{10} reductions from these units (e.g., less than 0.1 dv improvement from the most stringent technology), we conclude that additional analyses of control options would not result in a different BART determination. As a result, we propose to approve ADEQ's PM_{10} BART determination at Apache Units 2 and 3.

Finally, we are seeking comment on whether test methods other than EPA Method 201 and 202 [47] (chosen by ADEQ) should be allowed or required for establishing compliance with the PM_{10} limits that we are approving. In particular, as explained below, use of SCR [48] at these units is expected to result in increased condensable particulate matter in the form of sulfuric acid mist (H_2SO_4). In effect, the emission limit would be more stringent than intended by ADEQ and would likely not be achievable in practice. In order to avoid this result, while still assuring proper operation of the particulate control devices, we are requesting on comment on whether to allow compliance with the PM_{10} limit to be demonstrated using test methods that do not capture condensable particulate matter, namely EPA Methods 1 through 4 and Method 5 or Method 5e.[49] Method 201 is very rarely used for testing. The typical method used for filterable PM_{10} is Method 201A, ''constant sampling rate procedure,'' which is similar to Method 201, but is much more practical to perform on a stack.

c. BART for SO_2

ADEQ's Analysis: Apache Units 2 and 3 currently have wet limestone scrubbers installed for SO_2 removal.[50] Under the BART Guidelines, a state is not required to evaluate the replacement of the current SO_2 controls if their removal efficiency is over 50 percent, but should consider cost-effective scrubber upgrades designed to improve the system's overall SO_2 removal efficiency. Relying upon the BART analysis submitted by AEPCO,[51] ADEQ found that the following potential upgrades to the scrubbers are technically feasible:

- Elimination of bypass reheat,
- Installation of liquid distribution rings,
- Installation of perforated trays,
- Use of organic acid additives,
- Improved or upgraded scrubber auxiliary system equipment, and
- Redesigned spray header or nozzle.

ADEQ found that any upgrades likely would not increase power consumption, but would increase scrubber waste disposal and makeup water requirements, and would reduce the stack gas temperature. These three factors are the normal outcome of treating more of the exhaust gas and removing more of the SO_2 (increased scrubber waste disposal) and should not be given much weight in selecting a BART emission limit. ADEQ also noted that AEPCO had already made the following upgrades to the scrubbers: Elimination of flue gas bypass; splitting the limestone feed to the absorber feed tank and tower sump; upgrade of the mist eliminator system; installation of suction screens at pump intakes; automation of pump drain valves, and replacement of scrubber packing with perforated stainless steel trays. In addition, AEPCO tried using dibasic acid additive, but found that it did not result in significantly higher SO_2 removal. ADEQ did not evaluate the cost or visibility impacts of any additional upgrades to the scrubbers, but determined that BART for SO_2 emissions was no new controls and an emission limit of 0.15 lb/MMBtu on a 30-day rolling average basis.

EPA's Evaluation: We are proposing to approve ADEQ's SO_2 BART determination for Apache Units 2 and 3. Although ADEQ has not demonstrated that it fully considered all cost effective scrubber upgrades, as recommended by the BART Guidelines, ADEQ conducted a five-factor BART analysis and its final SO_2 BART determination for Apache Units 2 and 3 is consistent with the presumptive BART limit of 0.15 lb/MMBtu for utility boilers.[52] We have no evidence that additional analysis would have resulted in a lower emission limit. Therefore, we are proposing to approve the SO_2 emission limit of 0.15 lb/MMBtu (30-day rolling average) for Apache Units 2 and 3.

However, we note that Apache can receive coal from a number of different mines that can have differing sulfur content and potential for SO_2 emissions.[53] Therefore, we are seeking comment on whether additional cost-effective scrubber upgrades are available that would warrant a lower emission limit. We are also requesting comment on whether requiring 90 percent control efficiency in addition to the lb/MMBtu limit would better assure proper operation of the upgraded scrubbers when burning some types of low-sulfur western coal. If we receive information establishing that a lower limit is achievable or that a control efficiency requirement is needed, then we may disapprove the SO_2 emissions limit set by ADEQ and promulgate a revised limit for one or both of these units.

3. Cholla Units 2, 3 and 4

Cholla Power Plant consists of four primarily coal-fired electricity generating units with a total plant-wide generating capacity of 1,150 megawatts. Unit 1 is a 125 MW tangentially-fired, dry-bottom boiler that is not BART-eligible. Units 2, 3 and 4 have capacities of 300 MW, 300 MW and 425 MW, respectively, and are tangentially-fired, dry-bottom boilers that are each BART-eligible. Based on information provided by APS, the Cholla units operate on a blend of bituminous and sub-bituminous rank coals from the Lee Ranch and El Segundo mines.[54]

a. BART for NO_X

ADEQ's Analysis: APS submitted a BART analysis to ADEQ in January 2008. At the time of submittal, Cholla Units 2, 3 and 4 were equipped with close-coupled overfire air (COFA) as NO_X controls. APS developed baseline NO_X emissions by examining the highest 24-hour average emissions from

[46] See AEPCO BART Analysis Technical Memorandum dated July 8, 2009, page 12.

[47] See 40 CFR part 51 Appendix M.

[48] EPA is proposing SCR as BART for all of the coal-fired units. See Section VII.

[49] See 40 CFR part 60 appendix A.

[50] See Arizona Regional Haze SIP, Appendix D, pages 69–71 for ADEQ's BART Analysis for SO_2 at Apache Units 2 and 3.

[51] See AEPCO Apache Unit 2 BART Analysis.

[52] See BART Guidelines § IV.E.4.

[53] See, e.g. Apache Unit 2 BART Analysis, Table 3–1.

[54] A copy of the coal contract, including obligation amounts and coal quality, can be found in Docket Item B–09, ''Additional APS Cholla BART response'', Appendix B.

2001 to 2003.[55] APS examined several NO_X control technologies, including combustion controls and add-on post combustion controls. A summary of the costs of compliance and visibility impacts associated with these options is presented in Table 12.

TABLE 12—CHOLLA UNITS 2, 3, AND 4: ARIZONA'S COST AND VISIBILITY SUMMARY FOR NO_X

Control option	Emission rate (lb/MMBtu)	Emissions removed (tons/yr)	Annualized cost ($/year)	Cost-effectiveness ($/ton)		Visibility improvement [a] (deciviews)		Cost per total deciview improvement ($/dv)
				Average	Incremental (from previous)	Total (from baseline)	Incremental (from previous)	
Cholla 2								
COFA (baseline)	0.50	.....	.....	.....	.....	.....	.....	.....
LNB + SOFA	0.22	3,314	$635,000	$192	.....	0.187	.....	$3,400,000
SNCR + LNB + SOFA	0.17	3,900	2,175,000	558	2,628	0.218	0.031	9,980,000
ROFA	0.16	4,017	2,297,000	572	1,043	0.232	0.014	9,900,000
ROFA w/Rotamix	0.12	4,485	3,384,000	755	2,323	0.261	0.029	12,970,000
SCR + LNB + SOFA	0.07	5,071	9,625,000	1,898	10,650	0.287	0.026	33,540,000
Cholla 3								
COFA (baseline)	0.41	.....	.....	.....	.....	.....	.....	.....
LNB + SOFA	0.22	2,096	635,000	303	.....	0.13	.....	5,040,000
SNCR + LNB + SOFA	0.17	2,648	2,157,000	815	2,757	0.16	0.038	13,150,000
ROFA	0.16	2,758	2,243,000	813	782	0.17	0.005	13,270,000
ROFA w/Rotamix	0.12	3,200	3,308,000	1,034	2,410	0.20	0.029	16,710,000
SCR + LNB + SOFA	0.07	3,751	9,569,000	2,551	11,363	0.23	0.032	41,610,000
Cholla 4								
COFA (baseline)	0.42	.....	.....	.....	.....	.....	.....	.....
LNB + SOFA	0.22	3,390	820,000	242	.....	0.21	.....	3,960,000
SNCR + LNB + SOFA	0.17	4,259	2,852,000	670	2,338	0.27	0.058	10,760,000
ROFA	0.16	4,433	3,179,000	717	1,879	0.28	0.016	11,310,000
ROFA w/Rotamix	0.12	5,129	4,537,000	885	1,951	0.34	0.055	13,500,000
SCR + LNB + SOFA	0.07	5,998	13,230,000	2,206	10,003	0.41	0.072	32,430,000

[a] At the Class I area exhibiting the greatest baseline visibility impact, Petrified Forest National Park.

This information is contained in the Cholla BART analyses for each unit, and was relied upon by ADEQ in developing its RH SIP.[56] Estimates of control technology emission rates were developed based on a combination of vendor quotes, contractor information, and internal APS information regarding environmental upgrades.[57] Annual emission reductions were calculated based upon the emission rate estimates combined with annual capacity factors as reported in CAMD data from 2001 to 2006.[58] Control costs were also developed based on a combination of vendor quotes and contractor information. These cost calculations provided line item summaries of capital costs and annual operating costs, but did not provide further supporting information such as detailed equipment lists, vendor quotes, or the design basis for line item costs.

As part of its BART analysis, APS performed visibility modeling in order to evaluate the visibility improvement attributable to each of the NO_X control technologies that it considered. This visibility modeling was performed using three years of meteorological data (2001 to 2003), and was generally performed in accordance with the WRAP protocol, with a few exceptions. For example, rather than using a constant monthly ammonia background concentration of 1.0 ppb as specified in the WRAP protocol, APS used a variable monthly background ammonia concentration that varied from 0.2 ppb to 1.0 ppb.

For assessing the degree of visibility improvement, ADEQ considered only the visibility benefits at the area with the highest base case (pre-control) impact, the Petrified Forest National Park. For each control, ADEQ listed visibility improvement in deciviews, and visibility cost-effectiveness, (Arizona SIP submittal, ''Appendix D: Arizona BART—Supplemental Information'', p.77) as in the comparable section for Apache. For Unit 2, improvements range from 0.19 dv for LNB with SOFA to 0.29 dv for SCR. Costs per deciview range from $3.4 million for LNB to $33.5 million for SCR. Benefits for Unit 3 are about 20 percent lower (0.13 to 0.23 deciview), and for Unit 4 are about 20 percent higher (0.21 to 0.41 deciview), with percent differences increasing with more stringent control. For Unit 3, costs per deciview range from $5 million for LNB with SOFA to $41.6 million for SCR (about 30 percent higher than for Unit 2). For Unit 4, costs range from $4 million for LNB with SOFA to $32.4 million for SCR (about 20 percent higher except that SCR has a slightly lower cost per deciview).

ADEQ concluded (*ibid.,* p. 79) that LNBs with new SOFA systems represent BART for all three units, noting that for all scenarios the visibility benefits were less than 0.5 dv. ADEQ also stated that SCR, the most expensive option, provides only about 0.1 dv benefit more than LNB with SOFA, the least expensive option. This statement appears to apply only to Units 2 and 3; the comparable benefit for Unit 4 is 0.2 dv.

In evaluating APS' BART analysis, ADEQ requested supporting information explaining certain assumptions used in the economic analysis, baseline emissions, and control technology options. Based on this additional

[55] See Docket Item B–06 through –08, APS Cholla BART Analyses, page 2–2.

[56] See Docket Item B–06 through –08, APS Cholla BART Analyses. This information is also summarized in Docket Item B–01, Arizona Regional Haze SIP, Appendix D, Tables 11.3 through 11.5.

[57] As described in Table 3–2, Docket Items B–06 through –08, APS Cholla BART Analyses.

[58] As listed in Table 2–1, Docket Items B–06 through –08. Annual capacity factors used for each unit are 91 percent (Cholla 2), 86 percent (Cholla 3), and 93 percent (Cholla 4).

information as well as APS' original BART analysis, ADEQ determined that LNB with SOFA is BART for NO_X at Cholla Units 2, 3, and 4. In making this determination, ADEQ relied almost exclusively on the degree of visibility improvement. ADEQ cited small visibility improvement on a per-unit basis, stating that ''the change in deciviews between the least expensive and most expensive NO_X control technologies [..] is only 0.104 deciviews.'' [59] ADEQ's determination suggests that total capital costs may have been a consideration, although it is not clear to what extent this may have informed ADEQ's decision making, with the RH SIP simply stating, ''[t]he corresponding capital costs are $5.4 million for LNB/SOFA and $82.8 million for SCR with LNB/SOFA.'' [60]

EPA's Evaluation: We disagree with several aspects of the analyses performed for Cholla Units 2, 3, and 4. Regarding the control cost calculations, we note that certain line item costs not allowed by the EPA Control Cost Manual were included, such as owner's costs, surcharge, and AFUDC. Inclusion of these line items has the effect of inflating the total cost of compliance and the cost per ton of pollutant reduced. As a result, we are proposing to find that ADEQ did not follow the requirements of section 51.308(e)(1)(ii)(A) by not properly considering the costs of compliance for each control option.

Regarding ADEQ's analysis of visibility impacts, the modeling procedures relied on by ADEQ for assessing the visibility impacts from Cholla were generally in accord with EPA guidance, but the use of the modeling results in evaluating the BART visibility factor was problematic. As was the case for Apache, ADEQ appears to have considered benefits from controls on only one emitting unit at a time. EPA believes that ADEQ's use of this procedure substantially underestimates the degree of visibility improvement from controls. ADEQ also overlooked comparable benefits at seven Class I areas besides Petrified Forest, thereby understating the full visibility benefits of the candidate controls. Using the default 1 ppb ammonia background concentration would also have increased estimated impacts and control benefits. For these reasons, EPA proposes to find that the ADEQ selection of LNB for Cholla under the degree of visibility improvement BART factor is not adequately supported, and that more stringent control may be warranted.

b. BART for PM_{10}

ADEQ's Analysis: As of May 2009, Cholla Units 3 and 4 were both equipped with fabric filters for PM_{10} control, while Cholla Unit 2 was equipped with a mechanical dust collector and a venturi scrubber.[61] In its BART analysis, ADEQ noted that the facility had committed to install a fabric filter at Unit 2 by 2015. Because fabric filters are the most stringent control available for reducing PM_{10} emissions, ADEQ did not conduct a full BART analysis, but concluded that fabric filters and an emission limit of 0.015 lb/MMBtu are BART for control of PM_{10} at Units 2, 3, and 4. ADEQ also noted that ''PM_{10} emissions will be measured by conducting EPA Method 201/202 tests.''

EPA's Evaluation: Given that ADEQ has chosen the most stringent control technology available and set an emissions limit consistent with other units employing this technology, we are proposing to approve this BART determination of an emission limit of 0.015 lb/MMBtu for PM_{10} at Cholla Units 2, 3, and 4.

c. BART for SO_2

Cholla Units 2, 3, and 4 are all equipped with wet lime scrubbers for SO_2 control.[62] Specifically, Unit 2 is equipped with four venturi flooded disc scrubbers/absorber with lime reagent, capable of achieving 0.14 lb/MMBtu to 0.25 lb/MMBtu of SO_2. Units 3 and 4 were retrofitted in 2009 and 2008, respectively, with scrubbers capable of achieving 0.15 lb/MMBtu of SO_2.

ADEQ's Analysis: Based on a limited five-factor analysis, ADEQ determined BART for SO_2 at Cholla Unit 2 is upgrades to the existing scrubber that would achieve a limit of 0.15 lb/MMBtu. Because the BART analysis submitted by APS was conducted prior to installation of the scrubbers on Units 3 and 4, it included an analysis of other potential control technologies, namely, dry flue gas desulfurization and dry sodium sorbent injection. However, APS had already installed the wet lime scrubbers by the time ADEQ conducted its own BART analysis. Therefore, ADEQ did not consider SO_2 controls other than wet lime scrubbers for Units 3 and 4, but determined BART as use of these scrubbers with an associated emission limit of 0.15 lb/MMBtu of SO_2.

EPA's Evaluation: We are proposing to approve ADEQ's BART determination for SO_2 at Cholla Units 2, 3, and 4. Although ADEQ did not fully consider all cost-effective scrubber upgrades as recommended by the BART Guidelines, we have no basis for concluding that additional analysis would have resulted in a lower emission limit. Therefore, we are proposing to approve the SO_2 emission limit of 0.15 lb/MMBtu (30-day rolling average) for Cholla Units 2, 3, and 4. However, we are seeking comment on whether additional cost-effective scrubber upgrades are available that would warrant a lower emission limit. If we receive comments establishing that a lower limit is achievable, then we may disapprove the SO_2 emissions limit set by ADEQ and promulgate a revised limit for one or more of these units.

4. Coronado Units 1 and 2

Coronado Generating Station consists of two EGUs with a total plant-wide generating capacity of over 800 MW. Units 1 and 2 are both dry-bottom, turbo-fired boilers, each with a gross unit output of 411 MW. Both units are BART-eligible and are coal-fired boilers operating on primarily Powder River Basin sub-bituminous coal.

SRP entered into a consent decree with EPA in 2008.[63] This consent decree resolved alleged violations of the CAA which occurred at Units 1 and 2 of the Coronado Generating Station, arising from the construction of modifications without obtaining appropriate permits under the Prevention of Significant Deterioration provisions of the CAA, and without installing and applying best available control technology. The consent decree resolved the claims alleged by EPA in exchange for SRP's payment of a civil penalty and SRP's commitment to perform injunctive relief including: (1) Installation of pollution control technology to control emissions of NO_X, SO_2, and PM—including flue gas desulfurization devices to control SO_2 on Units 1 and 2 at the Coronado Station and installation of SCR to control NO_X on one of the units (Unit 2); (2) meet specified emission rates or removal efficiencies for NO_X, SO_2, and PM; (3) comply with a plant-wide emissions cap for NO_X; and (4) perform $ 4 million worth of mitigation projects. The consent decree is not a permit, and compliance with the consent decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The emission rates and

[59] Docket Item B–01, Arizona Regional Haze SIP, Appendix D, Page 79.

[60] *Id.*

[61] See Arizona Regional Haze SIP, Appendix D, pages 79–81 for ADEQ's BART Analysis for PM_{10} at Cholla Units 2, 3, and 4.

[62] See Arizona Regional Haze SIP, Appendix D, pp. 81–83, for ADEQ's BART Analysis for SO_2 at Cholla Units 2, 3, and 4.

[63] See Docket Item G–01, Consent Decree between United States and Salt River Project Agricultural Improvement and Power District.

removal efficiencies set forth in the consent decree do not relieve SRP from any obligation to comply with other state and federal requirements under the CAA, including SRP's obligation to satisfy any State modeling requirements set forth in the Arizona SIP.

a. BART for NO_X

ADEQ's Analysis: ADEQ's BART analysis relied in large part on an analysis submitted by SRP in February 2008. In its analysis, SRP developed baseline NO_X emissions by examining continuous emission monitoring system (CEMS) data from 2001 to 2003.[64] SRP examined several NO_X control technologies, including combustion controls and add-on post combustion controls. A summary of the costs of compliance and visibility impacts associated with these options is presented in Table 13. This information was contained in the SRP Coronado BART analysis, and was relied on by ADEQ in developing its RH SIP. Estimates of control technology emission rates were developed based on information provided by equipment vendors.[65] SRP's analysis did not provide an estimate of annual emissions.

TABLE 13—CORONADO UNITS 1 AND 2: ARIZONA'S COST AND VISIBILITY SUMMARY FOR NO_X

Control option	Emission rate (lb/MMBtu)		Total emissions removed [a] (tons/yr)	Total annualized cost ($/year)	Cost-effectiveness [b] ($/ton)		Visibility improvement [c] (deciviews)		Cost per total deciview improvement [d] ($/dv)	Improvement in visibility index [e] (deciviews)	
	Unit 1	Unit 2			Average	Incremental (from previous)	Total (from baseline)	Incremental (from previous)		Total (from base case)	Incremental (from previous)
OFA (baseline)	0.433	0.466	.....	.....	.....	.....	.....	.....	.....	.....	.....
Full LNB + OFA	0.32	0.32	5,838	$1,227,000	$210	.....	0.12	.....	$10,225,000	0.11	.....
Full SNCR + LNB + OFA	0.22	0.22	10,195	4,654,000	456	787	0.16	0.04	29,087,500	0.19	0.080
Partial SCR + LNB + OFA [f]	0.32	0.08	11,003	8,557,000	778	4,830	0.24	0.12	35,654,167	0.22	0.030
Full SCR + LNB + SOFA	0.08	0.08	16,730	17,090,000	1,022	1,490	0.39	0.27	43,820,513	0.34	0.120

[a] SRP did not provide estimates of annual emissions in its BART analysis. These values are summarized from the Arizona RH SIP.
[b] Cost-effectiveness was not presented in the Arizona RH SIP. These values are calculated from the emission removal and annualized costs that were included in the RH SIP.
[c] Visibility improvement at the Class I area exhibiting the greatest baseline visibility impact, Petrified Forest National Park, from the SRP Coronado BART Analysis.
[d] Cost per total deciview improvement was not presented in the Arizona RH SIP. These values are calculated from the annualized costs that were included in the RH SIP, and the visibility improvement at Petrified Forest National Park, from the SRP Coronado BART Analysis.
[e] Visibility index used in the Arizona RH SIP is the average of the impacts over the nine closest Class I areas.
[f] This control option examined LNB+OFA on Unit 1 and SCR on Unit 2.

Control costs for the various options considered were developed by Sargent and Lundy, the engineering firm retained by SRP for emission control projects at Coronado. In its BART analysis and subsequent additional response to ADEQ, SRP provided summaries of total control costs, such as total annual operating and maintenance costs and total annualized capital cost, but did not provide cost information at a level of detail that included line item costs. [66]

As part of its BART analysis, SRP performed visibility modeling in order to evaluate the visibility improvement attributable to each of the NO_X control technologies that it considered. This visibility modeling was performed using three years of meteorological data (2001 to 2003), and relied partially on the WRAP protocol with certain revisions based on EPA and Federal Land Manager guidance that became available in the intervening period. For example, the WRAP protocol used CALPUFF model version 6, whereas SRP used the current EPA-approved CALPUFF version 5.8.

For assessing the degree of visibility improvement, ADEQ considered a visibility index, defined as the average of the visibility benefits at the closest nine Class I areas. The average included the five areas with the highest baseline impacts. This metric is unlike that used for Apache and Cholla, for which the benefits at the single area with maximum baseline impact were used. Since it is an average, it is somewhat similar to the sum of benefits over the nine areas, a cumulative metric used in other analyses, except it is divided by nine to compute the average. (Typically the sum would be computed over all 17 Class I areas impacted by the Coronado facility.) For each control, ADEQ listed the average visibility improvement in deciviews, and cost in millions of dollars per average deciview improvement.[67] Improvements in the visibility index ranged from 0.11 dv for LNB with OFA to 0.34 dv for SCR. Costs per deciview for the index ranged from $11.1 million for LNB to $50.3 million for SCR (not shown in the Table above).

While an average of the visibility benefits over the nearest areas is an informative number, it is not directly comparable to the more typical metrics of the maximum benefit seen at any area, and sum over the areas. Moreover, neither the ADEQ RH SIP nor the facility's report (BART Analysis for the Coronado Generating Station Units 1 & 2, Document No. 05830–012–200, ENSR Corporation, February 2008) include control benefits for individual Class I areas. Thus, the maximum area benefit cannot be read from either document. However, the benefits can be computed from the individual area impacts that are provided in SRP's report, including for Petrified Forest National Park, which had the highest baseline impact. Figures that are comparable to those for Apache and Cholla are included in the Table 13. Coronado's maximum area visibility benefits range from 0.12 dv for LNB to 0.39 dv for SCR. The costs per deciview range from $10.2 million for LNB with OFA to $43.8 for SCR.

In evaluating SRP's BART analysis, ADEQ requested additional supporting information from SRP regarding control cost calculations, and for further explanation regarding SRP's recommendation for BART for NO_X. In developing its Regional Haze SIP, ADEQ

[64] See Docket Item B–10, SRP Coronado BART Analysis, page 3–1.

[65] See Docket Item B–10, SRP Coronado BART Analysis, p. 4–5.

[66] See Docket Item B–11, Additional SRP Coronado response.

[67] Arizona RH SIP, Appendix D, p. 112.

determined that LNB with OFA constitutes BART for NO_X at Coronado Units 1 and 2. In making this determination, ADEQ did not provide adequate information regarding its rationale or weighing of the five factors, stating only ''[a]fter reviewing the BART analysis provided by the company, and based upon the information above, ADEQ has determined that BART for NO_X at Coronado Units 1 and 2 is advanced combustion controls (Low NO_X burners with OFA) with an associated NO_X emission rate of 0.32 lb/MMBtu [..]'' [68]

EPA's Evaluation: We disagree with several aspects of the BART analysis for Coronado Units 1 and 2. Regarding the control cost calculations, we note that SRP did not provide ADEQ with control cost calculations at a level of detail that allowed for a comprehensive review. Without such a level of review, we do not believe that ADEQ was able to evaluate whether SRP's control costs were reasonable. As a result, we are proposing to find that ADEQ did not follow the requirements of section 51.308(e)(1)(ii)(A) because ADEQ did not properly consider the costs of compliance for each control option.

The modeling procedures relied on by ADEQ for assessing the visibility impacts from Coronado were generally in accord with EPA guidance. Coronado Units 1 and 2 were modeled together, and the modeling was done with the current regulatory version 5.8 of the CALPUFF modeling system.[69] However, the use of the modeling results in evaluating the BART visibility factor was problematic. The modeling results show that, of the controls considered, only SCR would provide substantial visibility benefits; the other controls options would provide roughly half the 0.5 dv contribution benchmark. ADEQ did not consider the typical visibility metrics of benefit at the area with maximum impact, nor benefits summed over the areas. Using the default 1 ppb ammonia background concentration would also have increased estimated impacts and control benefits. For these reasons, EPA proposes to find that the ADEQ selection of LNB with OFA for Coronado under the degree of visibility improvement BART factor is not adequately supported, and that more stringent control may be warranted. ADEQ provided little reasoning about the visibility basis for the Coronado BART selection. For example, there is no weighing of the visibility benefits and visibility cost-effectiveness for the various candidate controls and the various Class I areas.

In addition to the problems noted above, we find that overall ADEQ has not documented its evaluation of the results of its five-factor analysis, as required by 51.308(e)(1)(ii)(A) and the BART Guidelines. Although ADEQ has developed information regarding each of the five factors, its selection of BART does not cite or interpret information from its analyses. ADEQ does not, for example, indicate whether or not it considered any cost thresholds to be reasonable or expensive in analyzing the costs of compliance for the various control options. We note that ADEQ has made similar NO_X BART determinations of LNB with OFA at other facilities, such as Cholla Power Plant. Although ADEQ's BART determinations for these other facilities implied that cost of compliance was an important consideration, it does not provide a rationale for the determination of NO_X BART at Coronado.[70] Therefore, we propose to determine that ADEQ did not follow the requirements of section 51.308(e)(1)(ii)(A). We propose to disapprove ADEQ's selection of LNB with OFA as BART for NO_X at Coronado Units 1 and 2.

b. BART for PM_{10}

Emissions of PM_{10} from Coronado Units 1 and 2 are currently controlled by hot-side ESPs.[71] Under the terms of the Consent Decree described above in Section 4, SRP is required to optimize its ESPs to achieve a PM_{10} emission rate of 0.030 lb/MMBtu.[72]

ADEQ's Analysis: ADEQ conducted a streamlined PM_{10} BART analysis for Coronado Units 1 and 2. In particular, ADEQ found that ''BART for similar emissions units with similar emissions controls was determined to be 0.03 lb/MMBtu.'' ADEQ concluded that because Coronado Units 1 and 2 are already meeting a limit of 0.03 lb/MMBtu, ''further analysis was determined to be unnecessary.''

EPA's Evaluation: ADEQ's analysis does not demonstrate that all potential upgrades to the existing ESPs were fully evaluated. However, we have no evidence that additional reductions in PM_{10} emissions would be achievable or cost-effective, or that such reductions would yield substantial visibility benefits. Therefore, we propose to approve ADEQ's PM_{10} BART determination at Coronado. However, we are seeking comment on whether additional cost-effective upgrades to the existing ESPs are available that would warrant a lower emission limit. If we receive comments establishing that a lower limit is achievable, then we may disapprove the PM_{10} emissions limit set by ADEQ and promulgate a revised limit for one or both of these units.

Finally, we are seeking comment on whether test methods other than EPA Method 201 and 202 [73] (chosen by ADEQ) should be allowed or required for establishing compliance with the PM_{10} limits that we are approving. In particular, as explained below, use of SCR at these units is expected to result in increased condensable particulate matter in the form of H_2SO_4. In effect, the emission limit would be more stringent than intended by ADEQ and would likely not be achievable in practice. In order to avoid this result, while still assuring proper operation of the particulate control devices, we are requesting on comment on whether to allow compliance with the PM_{10} limit to be demonstrated using test methods that do not capture condensable particulate matter, namely EPA Methods 1 through 4 and Method 5 or Method 5e.[74] Method 201 is very rarely used for testing. The typical method used for filterable PM_{10} is Method 201A, ''constant sampling rate procedure,'' which is similar to Method 201, but is much more practical to perform on a stack.

c. BART for SO_2

Emissions of SO_2 at Coronado Units 1 and 2 are currently controlled with the use of low-sulfur coal and partial wet flue gas.[75] However, the consent decree between EPA and SRP described above requires installation of wet flue gas desulfurization (WFGD) systems at either Unit 1 or Unit 2 by January 2012, and at the remaining unit by January 1, 2013. Both units must achieve and maintain a 30-day rolling average SO_2 removal efficiency of at least 95.0

[68] Docket Item B–01, Arizona Regional Haze SIP, Appendix D, Page 112.

[69] Arizona Regional Haze SIP, Appendix D, p. 112.

[70] We do note, however, that SRP does provide some additional analysis on this position in the BART analysis it submitted to ADEQ and in the responses it provided to ADEQ's additional questions. Aside from stating that it reviewed SRP's analysis, ADEQ did not specifically reference or include any aspects of SRP's analysis in the RH SIP. As a result, we are not assuming that ADEQ necessarily agrees with SRP's rationale, and have therefore not provided an analysis of it.

[71] See Arizona Regional Haze SIP, Appendix D, p. 112 for ADEQ's BART Analysis for PM_{10} at Coronado Units 1 and 2; and BART Analysis for Coronado Generating Station Units 1 and 2 (February 2008) for SRP's analysis.

[72] Docket Item G–01, Consent Decree between United States and Salt River Project Agricultural Improvement and Power District, § V.

[73] See 40 CFR part 51 appendix M.

[74] See 40 CFR part 60 appendix A.

[75] See Arizona Regional Haze SIP, Appendix D, pp. 113–15 for ADEQ's BART Analysis for PM_{10} at Coronado Units 1 and 2; and Docket No. B.10, BART Analysis for Coronado Generating Station Units 1 and 2 (Feb. 2008) for SRP's analysis.

percent or a 30-day rolling average SO_2 emissions rate of no greater than 0.080 lb/MMBtu.

ADEQ's Analysis: Because WFGD is the most effective control technology available for controlling SO_2 emissions, ADEQ did not evaluate other control options. Table 14 summarizes Arizona's the costs of compliance and improvement in visibility expected to result from installation of WFGD at both units. Based on this information, ADEQ determined SO_2 BART for both units is the installation of WFGDs and an emission rate of 0.08 lbs/MMBtu on 30-day rolling average basis.

TABLE 14—CORONADO UNITS 1 AND 2: ARIZONA'S BART SUMMARY FOR SO_2

	Option 1, baseline	Option 2, WFGD
Reduction in Emission (tpy)	.....	25,753
Annualized Cost	.....	$44,353,330
Visibility Index (dv)	2.66	1.28
Improvement in Visibility Index (dv)	.....	1.38
Incremental Cost-effectiveness ($ per dv)	.....	$32,140,094

EPA's Evaluation: We are proposing to approve ADEQ's SO_2 BART determination for Coronado Units 1 and 2. Although we do not necessarily agree with the underlying cost and visibility analyses performed by SRP, we have no evidence that additional analysis would have resulted in a lower emission limit. Therefore, we propose to approve ADEQ's SO_2 emission limit of 0.08 lb/MMBtu (30-day rolling average) for Coronado Units 1 and 2. However, we are seeking comment on whether a lower emission limit may be achievable when the units are burning a lower-sulfur coal. If we receive comments establishing that a lower limit is achievable, then we may disapprove the SO_2 emissions limit set by ADEQ and promulgate a revised limit for one or both of these units.

D. Enforceability of BART Limits

Regional Haze SIPs must include requirements to ensure that BART emission limits are enforceable. In particular, the RHR requires inclusion of (1) A schedule for compliance with BART for each source subject to BART; (2) a requirement for each BART source to maintain the relevant control equipment; and (3) procedures to ensure control equipment is properly operated and maintained.[76] General SIP requirements also mandate that the SIP include all regulatory requirements related to monitoring, recordkeeping and reporting for the BART emissions limitations.[77] ADEQ did not include any of these elements in its Regional Haze SIP.[78] Therefore, we are proposing to disapprove this aspect of the Regional Haze SIP for these three sources and to promulgate a FIP to ensure the emission limits are enforceable.

VII. EPA's Proposed FIP Actions

A. EPA's BART Analyses and Determinations

EPA conducted a new five-factor BART analysis of the three facilities in order to evaluate Arizona's RH SIP, and to document the technical basis for proposing BART determinations in our FIP. Because EPA generally concurs with ADEQ's BART analyses in Steps 1 and 2 (Identify All Available Retrofit Control Technologies and Eliminate Technically Infeasible Options), we focused our technical analysis on Steps 3, 4 and 5 (Evaluate Control Effectiveness of Remaining Control Technologies, Evaluate Impacts and Document Results, and Evaluate Visibility Impacts). We relied on contractor assistance from the University of North Carolina Institute for the Environment to evaluate control effectiveness, perform cost calculations, and conduct new visibility modeling for each of the units at the three facilities, except Apache Generating Station Unit 1 for which this level of analysis was unnecessary. Our approach to each of these factors is explained below, followed by our BART determinations for the three sources in the next section. Copies of the contractor's reports and the details of our BART analyses are in our Technical Support Document (TSD) available in the docket.

1. Costs of Compliance

Cost Estimates and Calculations: In estimating the costs of compliance, we have relied on facility data from a number of sources including ADEQ, the Energy Information Administration (EIA), and EPA's Control Cost Manual. As discussed previously, ADEQ, in developing its RH SIP, requested certain clarifying information from the facilities regarding their control cost calculations, including greater detail regarding the underlying assumptions. ADEQ received responses of varying detail to these requests. Although in some cases the facilities provided summaries of certain broad line item costs, in no case does the supporting information that is available provide detail at a level that allows for critical review. In the case of SRP Coronado Generating Station, ADEQ received only a broad summary of control costs without itemized breakdowns of specific costs.

As a result, we have used EPA's Integrated Planning Model (IPM) to calculate the capital costs and annual operating costs associated with the various NO_X control options. EPA's Clean Air Markets Division (CAMD) uses IPM to evaluate the cost and emissions impacts of proposed policies to limit emissions of SO_2, NO_X, carbon dioxide (CO_2), and mercury (Hg) from the electric power sector. Developed by ICF Consulting, Inc. and used to support public and private sector clients, IPM is a multi-regional, dynamic, deterministic linear programming model of the U.S. electric power sector. EPA has used IPM in rulemakings such as the Mercury and Air Toxics Standard and the Cross-State Air Pollution Rule. For the purposes of this BART determination, we specifically used only the NO_X emission control technology cost methodologies contained in EPA's IPM Base Case v4.10 (August 2010).[79] For Base Case v4.10, EPA's Clean Air Markets Division contracted with engineering firm Sargent and Lundy to perform a complete bottom-up engineering reassessment of the cost and performance assumptions for SO_2 and nitrogen oxides NO_X emission controls. Summaries of our control cost estimates for the various control technology options considered for each unit are included below. Detailed cost

[76] 40 CFR 51.308(e)(1).

[77] See, e.g. CAA section 110(a)(2) (F) and 40 CFR 51.212(c).

[78] As described above, ADEQ did specify a test method for PM_{10} for each of the relevant sources (Method 201/202). However, we are proposing to also allow the use of test methods that do not capture condensable particulate matter, namely EPA Methods 1 through 4 and Method 5 or Method 5e.

[79] *http://www.epa.gov/airmarkt/progsregs/epa-ipm/BaseCasev410.html#documentation.*

calculations, including our contractor's report and cost calculation spreadsheets, are in the Technical Support Document.

We used publicly available information to estimate that AEPCO is a small utility. EPA requested information from AEPCO on the economics of operating Apache Generating Station and what impact the installation of SCR may have on the economics of operating Apache Generating Station. Specifically, EPA is seeking information on the ability of AEPCO to recover the cost of pollution control technology through rate increases and the impact those rate increases may have on AEPCO's customers. If we receive comments sufficiently documenting that installation of SCR may have a severe impact on the economics of operating Apache Generating Station, we may incorporate such considerations in our selection of BART. Our impact analysis and request for comment is discussed in more detail below, under EPA's BART Determinations for Apache Units 2 and 3.

Control Effectiveness: The evaluation of control effectiveness is an important part of a five-factor analysis because it influences both cost-effectiveness and visibility benefits. The BART Guidelines note that for each technically feasible control option:

> ''It is important * * * that in analyzing the technology you take into account the most stringent emission control level that the technology is capable of achieving. You should consider recent regulatory decisions and performance data (e.g., manufacturer's data, engineering estimates and the experience of other sources) when identifying an emissions performance level or levels to evaluate.'' [80]

In general, our estimates of LNB and SNCR control effectiveness differ slightly from the control effectiveness levels considered by ADEQ. In the case of LNB, for example, this is the result of the fact that actual emissions data for LNB performance were available for certain units at the time of our analysis. ADEQ's analysis was performed at an earlier date when these emissions data were not available. More detailed information regarding these differences is in our discussion of individual facilities in the following sections of this notice, as well as in our TSD.

In particular, we find that ADEQ did not adequately support its estimate of SCR control effectiveness. SCR, as an add-on control technology, can be installed by itself as a standalone option or in conjunction with burner upgrades. In cases where units can be upgraded with combustion control technology such as low-NOx burners, SCR is commonly installed as an add-on post-combustion control. When evaluating control options with a range of emission performance levels, the BART Guidelines indicate that ''in analyzing the technology you take into account the most stringent emission control level that the technology is capable of achieving.'' [81] Existing vendor literature and technical studies indicate that SCR systems are capable of achieving a 0.05 lb/MMBtu emission rate (approximately 80–90% control efficiency) and that this emission rate can be achieved on a retrofit basis, particularly when combined with combustion control technology such as LNB.[82]

For control options involving the installation SCR in conjunction with LNB, ADEQ considered the achievable emission rate to be between 0.07 lb/MMbtu (for Apache and Cholla) and 0.08 lb/MMbtu (for Coronado). These emission rates are within a range of SCR performance that has been considered by other western states in preparing RH SIPs, and may possibly be an appropriate estimation of the site-specific level of SCR performance for coal-fired units at Apache, Cholla, and Coronado. We note that the BART Guidelines indicate that, ''In assessing the capability of the control alternative, latitude exists to consider special circumstances pertinent to the specific source under review [* * *]. However, you should explain the basis for choosing the alternate level (or range) of control in the BART analysis.'' [83] Although the alternate levels of emission control considered by ADEQ for SCR in conjunction with LNB were stated in each respective facility's BART analysis, these emission rates were not further supported by any calculations, engineering analysis, or documentation. We do not believe that AEPCO, APS, and SRP have provided adequate supporting analysis to justify these emission rates. We are seeking comment on whether it is appropriate to consider an emission rate less stringent than 0.05 lb/MMBtu when evaluating the installation SCR in conjunction with LNB at Apache, Cholla, and Coronado.

In the absence of source-specific considerations warranting a less stringent control level, we presume that an emissions limit of 0.05 lb/MMBtu is achievable by these units through the use of SCR in addition to advanced combustion controls. We have recently received information from AEPCO and SRP regarding potential NO_X controls at their facilities. This information arrived too late to be fully evaluated for this proposed rulemaking, and EPA will need additional documentation from the utilities to support the information that they have provided to date. We have put the utility information in the docket for public review, and we will evaluate the information, and any additional information that the utilities may want to provide prior to making our final BART determinations.[84] If we receive additional comments that sufficiently document source-specific considerations justifying the use of an emission rate less stringent than 0.05 lb/MMBtu, we may incorporate such considerations in our selection of BART.

2. Energy and Non-Air Environmental Impacts

Energy Impacts: With respect to the potential energy impacts of the BART control options, we note that SCR incurs a draft loss that will increase parasitic loads, and that other emissions controls may also have modest energy impacts. The costs for direct energy impacts, i.e., power consumption from the control equipment and additional draft system fans from each control technology, are included in the cost analyses and are not considered further in this section. Indirect energy impacts, such as the energy to produce raw materials, are not considered, consistent with the BART guidelines.

Ammonia Adsorption: Ammonia adsorption (resulting from ammonia injection from SCR or selective non-catalytic reduction—SNCR) to fly ash is generally not desirable due to odor but does not impact the integrity of the use of fly ash in concrete. However, other NO_X control technologies, including LNB, also have undesirable impacts on fly ash. LNBs increase the amount of unburned carbon in the fly ash, also known as Loss of Ignition (LOI), which does affect the integrity of the concrete. Commercial scale technologies exist to remove ammonia and LOI from fly ash. Moreover, the impact of SCR on fly ash is smaller than the impact of LNB on fly ash, and in both cases, the adverse effects can be mitigated.[85] We conclude

[80] 40 CFR part 51, appendix Y § IV.D.3.

[81] 70 FR 39166.

[82] See Docket Items G–04, ''Emissions Control: Cost-Effective Layered Technology for Ultra-Low NO_X Control'' (2007), Docket Item G–05 ''What's New in SCRs'' (2006), and Docket Item G–06 ''Nitrogen Oxides Emission Control Options for Coal-Fired Electric Utility Boilers'' (2005).

[83] 40 CFR part 51, appendix Y § IV.D.3.

[84] Docket Items C–15 ''Letter from Kelly Barr (SRP) to Deborah Jordan (EPA)'' and C–16 ''Letter from Michelle Freeark (AEPCO) to Deborah Jordan (EPA).''

[85] ''Impact of Ammonia in Fly Ash on its Beneficial Use,'' Memorandum from Nancy Jones and Stephen Edgerton, EC/R Incorporated, to Anita

Continued

that the ability of the relevant facilities to sell fly ash is unlikely to be affected by the installation of SCR and SNCR technologies.

Safety: SCR and SNCR may involve potential safety hazards associated with the transportation and handling of anhydrous ammonia. Since each of the relevant facilities is served by a nearby railroad line, EPA concludes that the use of ammonia does not pose any additional safety concern as long as established safety procedures are followed.

Thus, EPA proposes to find that potential energy and non-air quality impacts do not warrant elimination of any of the otherwise feasible control options for NO_X at any of the sources.

3. Pollution Control Equipment in Use at the Source

The presence of existing pollution control technology at each source is reflected in our BART analysis in two ways: First, in the consideration of available control technologies, and second, in the development of baseline emission rates for use in cost calculations and visibility modeling. As noted above, we largely agree with ADEQ's consideration of available control technologies. However, because several of the affected units have had new controls installed in the last several years, we have adjusted the baseline emissions periods to reflect current control technology at the sources, as described further below in our proposed BART determinations.

4. Remaining Useful Life of the Source

We are considering each source's ''remaining useful life'' as one element of the overall cost analysis as allowed by the BART Guidelines. Since we are not aware of any federally- or State-enforceable shut-down date for any of the affected sources, we have used the default 20-year amortization period in the EPA Cost Control Manual as the remaining useful life of the facilities considered in this proposed action.

5. Degree of Improvement in Visibility

EPA estimated the degree of visibility improvement expected from a BART control based on the difference between baseline visibility impacts prior to controls and visibility impacts with controls in operation. EPA used the CALPUFF model version 5.8[86] to determine the baseline and post-control visibility impacts for all three facilities. EPA followed the modeling approach recommended in the BART Guidelines. We developed a modeling protocol, used maximum daily emissions as a baseline, applied estimated percent reductions for alternative control technologies, and used the CALPUFF model to estimate visibility impacts at Class I areas within 300 kilometers.

a. Modeling Protocol

A modeling protocol was developed by our contractor[87] at the University of North Carolina that is based largely on the WRAP protocol,[88] although there are a few differences between our protocol and that of the WRAP. Both protocols used meteorological inputs for 2001, 2002, and 2003 based on the Mesoscale Model version 5 (MM5). EPA meteorological inputs differed from the WRAP's in that the WRAP incorporated upper air data, as recommended by the Federal Land Managers, and also values for some parameters that enabled smoother and more realistic wind fields. These CALMET inputs were developed by the ENSR corporation for modeling of emissions at the Navajo Generating Station.[89] Another key difference was EPA's use of the current regulatory version of the CALPUFF modeling system, version 5.8. Facility stack parameters, such as stack height and exit temperature, were generally the same as those provided by WRAP member states to the WRAP, except that in some cases updated parameters were provided by the facilities at EPA's request.

We performed separate CALPUFF modeling runs using baseline emissions, and using the emissions remaining after each candidate control technology was applied to the baseline. For baseline PM emissions, EPA used the WRAP's estimates. However, following procedures developed by the National Park Service,[90] EPA divided those emissions into separate chemical species, and into separate coarse and fine particle fractions, to reflect better their varying visibility impacts.

Although costs and emission reductions for each candidate BART control technology must necessarily be calculated separately for each emitting unit of a facility, emissions from all the units will be emitted into the air simultaneously. EPA modeled all units (stacks) and pollutants simultaneously. That is, even though only NO_X BART alternatives were evaluated, SO_2 and PM_{10} emissions were also included in the modeling. Modeling all emissions from all the units accounts for the chemical interaction between multiple plumes, and between the plumes and the background concentrations. This also accounts for the facts that deciview benefits from individual units are not additive, and that each EPA BART proposal is for the facility as a whole.

b. Baseline Emissions

Baseline NO_X and SO_2 emissions for the facilities were generally based on the maximum daily emissions from recent data in EPA's CAMD database, with data examined for 2008 to 2011. The CAMD data derive from Continuous Emissions Monitoring in place at the facilities, and give the actual emissions that occurred. However, in cases where EPA is proposing to approve the BART emissions limits submitted by ADEQ, EPA used emission rates based on those limits, in lb/MMBtu, in combination with the maximum daily heat rate in MMBtu/hour from the CAMD data. The baseline emissions used by EPA reflect current fuels and control technologies in place at the facilities, as well as regulatory requirements the facilities will be required to meet independent of EPA's BART determination. This results in a more realistic estimate of current visibility impacts, and of the improvements that one would expect to result from implementation of EPA's proposed BART controls.

Lee, U.S. EPA/Region 9, August 31, 2010. Also see the TSD for further discussion.

[86] EPA relied on version 5.8 of CALPUFF because it is the EPA-approved version promulgated in the Guideline on Air Quality Models (40 CFR part 51, Appendix W, section 6.2.1.e; 68 FR 18440, April 15, 2003. It was also the approved version when EPA promulgated the BART Guidelines (70 FR 39122, July 6, 2005). EPA updated the specific version to be used for regulatory purposes on June 29, 2007, including minor revisions as of that date; the approved CALPUFF modeling system includes CALPUFF version 5.8, level 070623, and CALMET version 5.8 level 070623. At this time, any other version of the CALPUFF modeling system would be considered an ''alternative model'', subject to the provisions of Guideline on Air Quality Models section 3.2.2(b), requiring a full theoretical and performance evaluation.

[87] *Technical Analysis for Arizona Regional Haze FIPs: Modeling Protocol for Subject-to-BART and BART Control Options Analyses,* EP–D–07–102 WA5–12 Task 5, Institute for the Environment, University of North Carolina at Chapel Hill, March 14, 2012

[88] *CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States,* Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. Available on UCR Regional Modeling Center web site, BART CALPUFF Modeling, *http://pah.cert.ucr.edu/aqm/308/bart.shtml.*

[89] *Revised BART Analysis for the Navajo Generating Station Units 1–3,* ENSR Corporation, Document No. 05830–012–300, January 2009, Salt River Project—Navajo Generating Station, Tempe, AZ.

[90] ''Particulate Matter Speciation'', National Park Service, 2006. *http://www.nature.nps.gov/air/Permits/ect/index.cfm.*

c. Emission Reductions for Alternative Controls

For the CALPUFF modeling to assess visibility after application of a control technology, the percent control expected from the technology was applied to the baseline maximum daily emissions just described, as recommended in the BART Guidelines. As discussed elsewhere, LNB and SNCR each were assumed to reduce NO_X by 30 percent, and SCR was assumed to reduce NO_X by 90 percent. However, for SCR, we used a lower bound of 0.05 lb/MMBtu NO_X, an emission rate that we have confidence is achievable, as discussed above under ''Control Effectiveness''. The percent reduction actually applied to the maximum daily emissions was whatever was required to reduce the CAMD annual average emission factor down to this 0.05 lb/MMBtu NO_X. For the various emitting units at the facilities, this ranged from 80 to 89 percent, instead of a full 90 percent reduction. Finally, in modeling the visibility impact of SCR, EPA accounted for the increased sulfuric acid emissions that occur when the SCR catalyst oxidizes SO_2 present in the flue gas, using an estimation procedure developed by the Electric Power Research Institute[91]. (*Estimating Total Sulfuric Acid Emissions from Stationary Power Plants,* Version 2010a, 1020636, Technical Update, Electric Power Research Institute, April 2010) This side effect of SCR's NO_X reduction increases sulfate emissions and decreases the visibility benefits of SCR by around 5 percent.

d. Visibility Impacts

CALPUFF Modeling: EPA followed the BART Guidelines in assessing visibility impacts. For each Class I area within 300 km of a facility, the CALPUFF model is used to simulate the baseline visibility impact of each facility and the impacts resulting after alternative controls are applied. However, certain aspects of assessing visibility with CALPUFF are not fully addressed in the Guidelines. These aspects include which ''98th percentile'' from the model to use, the visibility calculation method (old vs. revised IMPROVE equation), and natural background concentrations (annual average versus best 20 percent of days).

As recommended in the BART Guidelines, the 98th percentile daily impact in deciviews is used as the basic metric of visibility impact. (For a given Class I area, and for each modeled day, the model finds the maximum impact. From among the 365 maximum daily values, the 98th percentile is chosen, that is, the 8th highest.) Since multiple years of meteorology are modeled, there are at least three ways to use the model results: The maximum from among the 98th percentiles for the individual years 2001, 2002, and 2003 (''maximum''); the average of these three (''average''), or a single 98th percentile computed from all three years of data together (''merged'', the 22nd high among 1095 daily values). The average and merged values are both unbiased estimates of the true 98th percentile; for this proposal EPA has used the merged value. The more conservative maximum value would be appropriate for a screening purpose, such as for determining whether a source is subject to BART.

Visibility Calculation Method: The visibility calculation method relied on by EPA differed from that used by ADEQ. Visibility impacts may be simulated with CALPUFF using either the old or the revised IMPROVE equation for translating pollutant concentrations into deciviews; these are respectively CALPUFF visibility methods 6 and 8 (implemented in the CALPOST post-processor). Many BART assessments were performed before method 8 was incorporated into CALPUFF, so method 6 was generally for past assessments. However, in this proposal EPA is primarily relying on method 8. Method 8 is currently preferred by the Federal Land Managers; since the revised IMPROVE equation performs better at estimating visibility.[92] For the facilities examined in this proposal, baseline impacts using method 6 would average about 10 percent higher than those using method 8 (with a range of 3 percent lower to 22 percent higher depending on facility and Class I area; the effect for areas showing the largest benefit from control was similar to the average).

Another CALPUFF choice is whether to calculate visibility impacts relative to annual average natural conditions, or relative to the best 20 percent of natural background days; these may be referred to as ''a'' and ''b''. For both ''a'' and ''b'', background concentrations for each Class I area are available in a Federal Land Managers' document.[93] EPA Guidance allows for the use of either ''a'' or ''b.''[94] [95] Since the annual average has worse visibility and higher deciviews than the best days do, a given facility impact will be smaller relative to the average than it is relative to the best days. That is, a facility's impact will stand out less under poorer visibility conditions. Thus, modeled facility impacts and control benefits appear smaller when ''a'' is used than when ''b'' is used. In this proposal, EPA is relying on ''b'', best 20 percent, consistent with initial EPA recommendations for BART assessments. For the facilities examined in this proposal, baseline impacts would average about 20 percent lower using background ''a'' than those using background ''b'' (with a range of 18 percent to 28 percent lower depending on facility and Class I area; the effect for areas showing the largest benefit from control was similar to the average).

Considering visibility method and choice of background together, the BART visibility assessments relied on by ADEQ used method ''6a'', the old IMPROVE equation, and impacts relative to annual average natural conditions. This is a valid approach, and is consistent with EPA guidance.[96] However, for this proposal, EPA considered all four combinations of IMPROVE equation version and natural background: 6a, 6b, 8a, and 8b. EPA primarily relied on method ''8b'', that is, the revised IMPROVE equation, and impacts relative to the best 20 percent of natural background days. This is most consistent with our current understanding of how best to assess source specific visibility impacts. Combining the differences in visibility method and chosen background, for the facilities examined in this proposal, baseline impacts would average about 15 percent lower using method ''6a'' than those using method ''8b'' (with a range of 3 percent to 37 percent lower depending on facility and Class I area; the effect for areas showing the largest benefit from control was similar to the average). Results for all the various

[91] *Estimating Total Sulfuric Acid Emissions from Stationary Power Plants,* Version 2010a, 1020636, Technical Update, Electric Power Research Institute, April 2010.

[92] Pitchford, Marc, 2006, ''New IMPROVE algorithm for estimating light extinction approved for use'', The IMPROVE Newsletter, Volume 14, Number 4, Air Resource Specialists, Inc.; Web page: *http://vista.cira.colostate.edu/improve/Publications/news_letters.htm.*

[93] *Federal Land Managers' Air Quality Related Values Work Group (FLAG) Phase I Report—Revised* (2010), U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, October 2010. Available on Web page *http://www.nature.nps.gov/air/Permits/flag/.*

[94] BART Guidelines, 70 FR 39125, July 6, 2005. ''Finally, these final BART guidelines use the natural visibility baseline for the 20 percent best visibility days for comparison to the 'cause or contribute' applicability thresholds.''

[95] ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations'', memorandum from Joseph W. Paisie, EPA OAQPS, July 19, 2006, p.2.

[96] Additional Regional Haze Questions'', September 27, 2006 Revision, EPA OAQPS.

visibility methods are available in the TSD.

B. EPA's FIP BART Determinations

1. Apache Units 2 and 3

a. Costs of Compliance

Our general approach to calculating the costs of compliance is described in VII.A.1., while issues unique to Apache Units 2 and 3 are described herein. In particular, we highlight below certain aspects of our analysis of this factor that differ from ADEQ's and AEPCO's analysis.

i. Selection of Baseline Period

AEPCO's BART analysis used a 2002 to 2007 time period in order to establish its baseline NO_X emissions. In our analysis, we decided to make use of the most recent Acid Rain Program emission data reported to CAMD, which, at the time that we began our analysis in 2011, was the three-year period from 2008 to 2010. Based on CAMD documentation, no new control technology beyond the existing OFA system has been installed on either Apache Unit 2 or 3. We consider the use of this more recent baseline period to be a realistic depiction of anticipated future emissions.[97]

ii. SCR Control Efficiency

In determining the control efficiency of SCR, we have relied upon an SCR level of performance of 0.05 lb/MMBtu, which is more stringent than the level of performance used by ADEQ in its SIP. In the Apache BART analyses submitted to ADEQ, AEPCO indicated an SCR level of performance of 0.07 lb/MMBtu, but did not provide site-specific information describing how this emission rate was developed or discussing why a more stringent 0.05 lb/MMBtu level of performance could not be attained. Our control cost calculations for the SCR and LNB with OFA control options are based upon the control efficiency of SCR (combined with LNB) summarized in Table 15.

TABLE 15—APACHE 2 AND 3: EPA'S SCR (COMBINED WITH LNB) CONTROL EFFICIENCY

Unit	Baseline emission rate [1] (lb/MMBtu)	SCR emission rate	SCR control efficiency (percentage)
Apache 2	0.371	0.05	87
Apache 3	0.438	0.05	89

[1] This baseline emission rate represents operation of OFA only.

iii. Capacity Factor

As noted previously, AEPCO calculated annual emission estimates for its control scenarios, in tons per year, using annual capacity factors developed internally over an unspecified time frame.[98] The annual capacity factors AEPCO used for each unit were 92 percent (Apache 2), and 87 percent (Apache 3). We have also calculated annual emission estimates for our control scenarios using capacity factors, but have used information developed from CAMD information, and over a more recent 2008 to 2011 time frame. The annual capacity factors we have used for each unit are 62 percent (Apache 2), and 71 percent (Apache 3). We recognize that these capacity factors are lower than those used by AEPCO, and that by using these lower capacity factors, our estimates of total annual emissions (and correspondingly, the annual emission reductions) for each control scenario are lower than AEPCO's estimates.[99] Since cost-effectiveness ($/ton) is calculated by dividing annual control costs ($/year) by annual emission reductions (tons/year), the use of emission reductions based on lower capacity factors will increase the cost per ton of pollutant reduced.

We have elected to use the capacity factors specified above, as based on a 2008 to 2011 time frame, in order to remain consistent with the time frame used to develop baseline annual emissions for Apache and the other power plants that are the subject of today's proposed action.

iv. Summary of Control Cost Estimates

A summary of our control cost estimates for the various control technology options considered for Apache Units 2 and 3 is in Table 16. Detailed cost calculations, including our contractor's report and cost calculation spreadsheets, are available in our Technical Support Document.

TABLE 16—APACHE UNITS 2 AND 3: EPA'S CONTROL COST SUMMARY

Control option	Emission factor (lb/MMBtu)	Emission rate		Emissions removed (tpy)	Annual cost ($/yr)	Cost-effectiveness ($/ton)	
		(lb/hr)	(tpy)			Ave	Incremental (from previous)
Apache 2							
OFA (baseline)	0.371	859	2,333	.....	.....	.....	.....
LNB+OFA	0.26	601	1,633	700	1,142,120	1,632	.....
SNCR+LNB+OFA	0.18	421	1,143	1,190	2,652,841	2,230	3,084
SCR+LNB+OFA	0.05	116	314	2,019	5,869,299	2,908	3,881

[97] BART Guidelines, 40 CFR part 51, appendix P, Section IV.D.4.d.

[98] As listed in Table 2–1 in Docket Items B–03 and B–04, Apache BART Analyses.

[99] We note that there are multiple reasons why our annual emission estimates (and estimates of emission removal) are lower than AEPCO's and ADEQ's estimates. We are not implying that the use of capacity factor is the sole, or even dominant, reason for this difference, simply that the use of lower capacity factors will result in lower annual emission estimates.

TABLE 16—APACHE UNITS 2 AND 3: EPA'S CONTROL COST SUMMARY—Continued

Control option	Emission factor (lb/MMBtu)	Emission rate		Emissions removed (tpy)	Annual cost ($/yr)	Cost-effectiveness ($/ton)	
		(lb/hr)	(tpy)			Ave	Incremental (from previous)
Apache 3							
OFA (baseline)	0.438	974	3,028	.....	.....	.....	.....
LNB+OFA	0.31	682	2,120	908	1,153,378	1,270	.....
SNCR+LNB+OFA	0.22	477	1,484	1,544	2,968,611	1,922	2,854
SCR+LNB+OFA	0.05	111	346	2,683	6,103,078	2,275	2,754

As seen in Table 16, our calculations indicate that the SCR-based control options have average cost-effectiveness values of $2,275/ton to $2,908/ton, which falls in a range that we consider cost-effective. In addition, our calculations indicate that the SCR-based control options have an incremental cost-effectiveness of $2,754/ton to $3,881/ton, which is also in a range that we would consider cost-effective. As a result, our analysis of this factor indicates that the costs of compliance (average or incremental) are not sufficiently large to warrant eliminating any of the control options from consideration.

b. Visibility Improvement

The overall visibility modeling approach was described above; aspects of the modeling specific to Apache are described here. EPA is proposing a NO_X BART determination only for Apache units 2 and 3, but Unit 1 was also included in the modeling runs for greater realism in assessing the full facility's visibility impacts.[100] For Unit 1's NO_X emissions, ADEQ's emission factor of 0.56 lb/MMBtu was combined with the maximum MMBtu/hr heat rate from EPA's CAMD database for 2008 to 2010. The baseline emissions used for these units were the maximum daily emissions in lb/hr from 2008 to 2010; the maxima occurred in early 2008. The base case reflects only OFA as the control in place.

EPA evaluated LNB, SNCR (including LNB), and SCR (including LNB) applied to both Units 2 and 3; as mentioned above the SCR simulation accounted for the increase in sulfuric acid emissions due to catalyst oxidation of SO_2. SCR was assumed to give a control effectiveness of 87 percent and 89 percent for Units 2 and 3, respectively (less than 90 percent due to the 0.05 lb/MMBtu NO_X lower limit assumed for SCR). The nine Class I areas within 300 km of Apache were modeled; they are in the states of Arizona and New Mexico. The 98th percentile of delta deciviews over all three years of data was computed for each area and emission scenario.

Table 17 shows the impact for the base case, and the improvement from that baseline impact when controls are applied, all in deciviews, for each area. The Class I area types are National Monument (NM), Wilderness Area (WA), and National Park (NP). Also shown are the cumulative deciviews, the simple sum of impacts or improvements over all the Class I areas, and the number of areas with a baseline impact or improvement of at least 0.5 dv. Finally, the table includes two ''dollars per deciview'' measures of cost-effectiveness, both of which take the annual cost of the control in millions of dollars per year, and divide by an improvement in deciviews. For the first metric, ''$/max dv'', cost is divided by the deciview improvement at the Class I area with the greatest improvement. The second metric, ''$/cumulative dv'', divides cost by the cumulative deciview improvement. In assessing the degree of visibility improvement from controls, EPA relied heavily on the maximum dv improvement and the number of areas showing improvement, with cumulative improvement providing a supplemental measure that combines information on the number of areas and on individual area improvement. The dollars per deciview metrics provided information supplemental to the dollars per ton that was considered in the cost factor.

In its comments on Arizona's proposed Regional Haze SIP, the National Park Service noted that:

> Compared to the typical control cost analysis in which estimates fall into the range of $2,000–$10,000 per ton of pollutant removed, spending millions of dollars per deciview (dv) to improve visibility may appear extraordinarily expensive. However, our compilation of BART analyses across the U.S. reveals that the average cost per dv proposed by either a state or a BART source is $14–$18 million.[101]

While we do not necessarily consider $14 to $18 million/dv as being a reasonable range in all cases, we note that for all of the NO_X control options, including SCR, both the $/max dv and the $/cumulative dv are well below this range.

The area with the greatest dv improvement was the Chiricahua Wilderness Area; the improvement from LNB was 0.5 dv, from SNCR was 1 dv, and from SCR was 1.6 dv. Any of these improvements would contribute to improved visibility, with SCR being the superior option for visibility. The corresponding cumulative improvements are 2.1, 3.8, and 6.5. Both SNCR and SCR give improvements exceeding 0.5 dv at four areas, but for SCR the improvements at those areas also exceed a full 1 dv. The improvements from SCR are substantially greater than for the other candidate controls. The modeled degree of visibility improvement supports SCR as BART for Apache.

[100] Apache Unit 4, which consists of four simple-cycle gas turbines, was not included in the modeling because its NO_X emissions are less than 1 percent of the emissions of units 2 and 3, and are therefore expected to have a *de minimis* effect on modeled visibility impacts.

[101] Arizona Regional Haze SIP, Appendix E, Public Process, NPS General BART Comments on ADEQ BART Analyses (November 29, 2010), p. 4.

TABLE 17—APACHE UNITS 2 AND 3: EPA'S VISIBILITY IMPROVEMENT FROM NO_X CONTROLS

Class I Area	Baseline impact (dv)	Improvement from LNB (dv)	Improvement from SNCR (dv)	Improvement from SCR (dv)
Chiricahua NM	3.41	0.44	0.82	1.51
Chiricahua WA	3.46	0.53	1.00	1.59
Galiuro WA	2.22	0.39	0.65	1.10
Gila WA	0.63	0.14	0.22	0.37
Mazatzal WA	0.28	0.05	0.09	0.14
Mount Baldy WA	0.28	0.07	0.11	0.18
Saguaro NP	2.49	0.38	0.66	1.16
Sierra Ancha WA	0.29	0.06	0.10	0.14
Superstition WA	0.61	0.10	0.19	0.31
Cumulative dv	13.67	2.14	3.83	6.51
# areas >=0.5	6	1	4	4
$/max dv, millions	.....	$4.8	$6.0	$8.7
$/cumulative dv, millions	.....	$1.2	$1.6	$2.1

c. EPA's BART Determination

In considering the results of the five-factor analysis, we note that the remaining useful life of the source, as indicated previously by the plant economic life of Apache Units 2 and 3, is incorporated into control cost calculations as a 20-year amortization period. In addition, the presence of existing pollution control technology is reflected in the cost and visibility factors as a result of selection of the baseline period for cost calculations and visibility modeling. For Apache Units 2 and 3, a baseline period (2008 to 2010) was selected that reflects the currently existing pollution control technology (OFA). In examining energy and non-air quality impacts, we note certain potential impacts resulting from the use of ammonia injection associated with the SNCR and SCR control options, but do not consider these impacts sufficient enough to warrant eliminating any of the available control technologies.

Our consideration of degree of visibility improvement focuses primarily on the improvement from base case impacts associated with each control option. While each of the available NO_X control options achieves some degree of visibility improvement, we consider the improvement associated with the most stringent option, SCR with LNB and OFA, to be substantial. Our consideration of cost of compliance focuses primarily on the cost-effectiveness of each control option, as measured in cost per ton and incremental cost per ton of each control option. Despite the fact that the most stringent option, SCR with LNB and OFA, is the most expensive of the available control options, we consider it cost-effective on an average basis as well as on an incremental basis when compared to the next most stringent option, SNCR with LNB and OFA.

As a result, we consider the most stringent available control option, SCR with LNB and OFA, to be both cost-effective and to result in substantial visibility improvement, and that the energy and non-air quality impacts are not sufficient to warrant eliminating it from consideration. Therefore, the results of our five-factor analysis indicate that NO_X BART for Apache Units 2 and 3 is SCR with LNB and OFA.

However, we note that the BART guidelines state that:

> Even if the control technology is cost-effective, there may be cases where the installation of controls would affect the viability of continued plant operations. […]You may take into consideration the conditions of the plant and the economic effects of requiring the use of a control technology. Where these effects are judged to have a severe impact on plant operations you may consider them in the selection process, but you may wish to provide an economic analysis that demonstrates, in sufficient detail for public review, the specific economic effects, parameters, and reasoning.'' [102]

As explained in Section IX.C below, because AEPCO is a ''small entity'', as defined under the Regulatory Flexibility Act, we have conducted an initial assessment of the potential adverse impacts on AEPCO of requiring SCR with LNB and OFA. Using publicly available information, EPA estimates that the annualized cost of requiring SCR in Units 1 and 2 would likely be in the range of 3 percent of AEPCO's assets and between 6 and 7 percent of AEPCO's annual sales. The projected costs of SCR with LNB and OFA are approximately $12 million per year. This exceeds AEPCO's net margins of $9.5 million in 2010 and $1.9 million in 2011.[103]

In addition to conducting this initial economic impact assessment, we requested information from AEPCO on the economics of operating Apache Generating Station and what impact the installation of SCR may have on the economics of operating Apache Generating Station. We have just received a description of plant conditions and potential economic effects and are placing this information in the docket for this action.[104] We will consider this information and any additional information received during the comment period as part of our final action. If our analysis of this information indicates that installation of SCR will have a severe impact on the economics of operating Apache Generating Station, we will incorporate such considerations in our selection of BART.

Nonetheless, based on the available control technologies and the five factors discussed above, EPA is proposing to require Apache Generating Station to meet an emission limit for NO_X on Units 2 and 3 of 0.050 lb/MMBtu. Each of these emission limits is based on a rolling 30-boiler-operating-day average.

2. Cholla Units 2, 3 and 4

a. Costs of Compliance

Our general approach to calculating the costs of compliance is described in section VII.A.1 above. Issues unique to Cholla Units 2, 3 and 4 are explained

[102] 70 FR 39171.

[103] See Docket Item H–1Arizona Electric Power Cooperative, Inc. Annual Report Electric for Year Ending December 31, 2011 submitted to Arizona Corporation Commission Utilities Division, available at *http://www.azcc.gov/Divisions/Utilities/Annual%20Reports/2011/Electric/Arizona_Electric_Power_Cooperative_Inc.pdf.*

[104] Docket Item C–16, Letter from Michelle Freeark (AEPCO) to Deborah Jordan (EPA), AEPCO's Comments on BART for Apache Generating Station, June 29, 2012.

herein. There are several aspects of our analysis of this factor that differ from ADEQ's and APS' analysis and we discuss the most important of these below.

i. Selection of Baseline Period

APS' BART analysis used a 2001–03 time period in order to establish its baseline NO_X emissions. As noted previously, the NO_X control technology present on Cholla Units 2 through 4 during that time period was close-coupled over fire air (COFA). APS has since installed low-NO_X burners with separated over fire air (SOFA) on Cholla Units 2 through 4. In order to properly consider the second BART factor (pollution control equipment in use at the source) and to ensure that actual conditions at the plant were reflected in our baseline NO_X emissions, we decided to make use of the most recent Acid Rain Program emission data reported to CAMD, which, at the time that we began our analysis in 2011, was the three-year period from 2008 to 2010. Based on CAMD documentation, the low-NO_X burners were installed on the Cholla units at different times during 2008 and 2009, making it necessary for us to clearly distinguish between the pre-LNB and post-LNB periods of emission data for each unit.

The use of a 2008 to 2010 baseline was, however, complicated by the fact that the Cholla plant operates under a new coal contract for Lee Ranch/El Segundo coal, which is a higher NO_X-emitting coal than what was previously used.[105] This coal contract indicates that steadily increasing minimum quantities of coal shall be delivered, starting with 325,000 tons in 2006 and up to 3,700,000 tons in 2010. This gradual transition to the newer, higher-NO_X emitting coal source made it difficult to determine the extent to which a particular year's emissions were representative of anticipated annual emissions. In the absence of more detailed fuel usage records on a per-unit basis, it was not possible for us to identify which units may have operated using the newer coal during the 2006 to 2010 transition period to the newer coal type. We note, however, that the coal contract specifically states that, for 2010 to 2024, no later than July 1 of each year, the buyer shall indicate the annual tonnage for the following calendar year, and that in no case shall the annual tonnage be less than 3,700,000 tons. As a result, 2011 represents the first complete calendar year at which we can be certain that the Cholla plant operated at the new coal contract's ''full'' minimum purchase quantity of 3,700,000 tons per year.

Since 2011 Acid Rain Program emission data became available during the intervening time between the start of our analysis and our proposed action today, we have selected 2011 as the time period for establishing baseline annual NO_X emissions. Although this represents only a single year of data, we believe the use of this more recent baseline period represents the most realistic depiction of anticipated annual emissions, as it is the only time period that ensures each of the Cholla units is operating using the new coal and LNB with SOFA.

ii. SCR Control Efficiency

In determining the control efficiency of SCR, we have relied upon an SCR level of performance of 0.05 lb/MMBtu, which is more stringent than the level of performance used by ADEQ in its SIP. In the Cholla BART analysis submitted to ADEQ, APS indicated an SCR level of performance of 0.07 lb/MMBtu, but did not provide site-specific information describing how this emission rate was developed or discussing why a more stringent 0.05 lb/MMBtu level of performance could not be attained. Our control cost calculations for the SCR and LNB with OFA control options are based upon the SCR control efficiencies summarized below. These control efficiencies reflect the emission reductions associated with controlling from an annual average baseline emission rate that represents LNB with OFA (as described previously) down to an SCR emission rate of 0.05 lb/MMBtu.

TABLE 18—CHOLLA UNITS 2, 3 AND 4: EPA'S SCR CONTROL EFFICIENCY

Unit	Baseline emission rate [1] (lb/MMBtu)	SCR emission rate	SCR control efficiency (percentage)
Cholla 2	0.295	0.05	83
Cholla 3	0.254	0.05	80
Cholla 4	0.260	0.05	81

[1] As noted previously, this baseline emission rate reflects the installation of LNB+OFA

iii. Capacity Factor

As noted previously, APS calculated annual emission estimates for its control scenarios, in tons per year, using annual capacity factors based on Acid Rain Program data from CAMD over a 2001 to 2006 time frame.[106] The annual capacity factors APS used for each unit were 91 percent (Cholla 2), 86 percent (Cholla 3), and 93 percent (Cholla 4). We have also calculated annual emission estimates for our control scenarios using capacity factors developed from CAMD information, but have instead used a more recent 2008 to 2011 time frame. The annual capacity factors we have used for each unit are 74 percent (Cholla 2), 75 percent (Cholla 3), and 71 percent (Cholla 4). We recognize that these capacity factors are lower than those used by APS, and that by using these lower capacity factors, our estimates of total annual emissions (and correspondingly, the annual emission reductions) for each control scenario are lower than APS' estimates.[107] Since cost-effectiveness ($/ton) is calculated by dividing annual control costs ($/year) by annual emission reductions (tons/year), the use of emission reductions based on lower capacity factors will increase the cost per ton of pollutant reduced.

We have elected to use the capacity factors specified above, as based on a 2008 to 2011 time frame, in order to remain consistent with the time frame used to develop baseline annual emissions for Cholla and the other

[105] A copy of the coal contract, including obligation amounts and coal quality, can be found in Docket Item B–09, ''Additional APS Cholla BART response'', Appendix B.

[106] As listed in Table 2–1 in Docket Items B–06 through B–08, Cholla BART Analyses.

[107] We note that there are multiple reasons why our annual emission estimates (and estimates of emission removal) are lower than APS' and ADEQ's estimates. We are not implying that the use of capacity factor is the sole, or even dominant, reason for this difference, simply that the use of lower capacity factors will result in lower annual emission estimates.

power plants that are the subject of today's proposed action.[108]

iv. Summary of Control Costs

A summary of our control cost estimates for the various control technology options considered for is included below. Detailed cost calculations, including our contractor's report and cost calculation spreadsheets, can be found in our TSD.

TABLE 19—CHOLLA UNITS 2, 3 AND 4: EPA'S CONTROL COST SUMMARY

Control option	Emission factor (lb/MMBtu)	Emission rate		Emissions removed (tpy)	Annual cost ($/yr)	Cost-effectiveness ($/ton)	
		(lb/hr)	(tpy)			Ave	Incremental (from previous)
Cholla 2							
OFA	NA; LNB+OFA is the currently installed technology						
LNB+OFA (baseline)	0.295	892	2,890	.....	.....	.....	.....
SNCR+LNB+OFA	0.21	624	2,023	867	2,482,318	2,863	.....
SCR+LNB+OFA	0.05	151	490	2,400	7,475,028	3,114	3,257
Cholla 3							
OFA	NA; LNB+OFA is the currently installed technology						
LNB+OFA (baseline)	0.254	885	2,908	.....	.....	.....	.....
SNCR+LNB+OFA	0.18	620	2,036	872	2,533,432	2,904	.....
SCR+LNB+OFA	0.05	174	572	2,337	8,113,131	3,472	3,811
Cholla 4							
OFA	NA; LNB+OFA is the currently installed technology						
LNB+OFA (baseline)	0.260	1144	3,609	.....	.....	.....	.....
SNCR+LNB+OFA	0.18	801	2,526	1,083	3,185,822	2,943	.....
SCR+LNB+OFA	0.05	220	694	2,915	9,894,796	3,395	3,661

As indicated in Table 19, our calculations indicate that the SCR-based control options have average cost-effectiveness values of $3,114/ton to $3,472/ton, which falls in a range that we would consider cost-effective. In addition, our calculations indicate that the SCR-based control options have an incremental cost-effectiveness of $3,257/ton to $3,811/ton, which is also in a range that we would consider cost-effective. As a result, our analysis of this factor indicates that the costs of compliance (average or incremental) are not sufficiently large to warrant eliminating any of the control options from consideration.

b. Visibility Improvement

The overall visibility modeling approach was described above; aspects of the modeling specific to Cholla are described here. EPA made a NO_X BART determination for Cholla Units 2, 3 and 4, but Unit 1 (which is not BART-eligible) was also included in the modeling runs for greater realism in assessing the full facility's visibility impacts. For Unit 1's NO_X emissions, the maximum daily emissions from EPA's CAMD database for 2008 to 2010 were used; the maximum occurred in early 2008. LNB was installed on Units 2 and 4 early in 2008, and on Unit 3 in mid-2009; for a realistic base case, the baseline emissions used for these units were the maximum daily emissions in lb/hr from 2008–2010 occurring after the respective LNB installation dates. The maximum for unit 2 occurred in mid-2009, and the maxima for Units 2 and 3 occurred in late 2010. The base case reflects LNB as the control in place.

EPA evaluated SNCR (including LNB) and SCR (including LNB) applied to Units 2, 3 and 4. SCR was assumed to give a control effectiveness of 83 percent, 80 percent, and 81 percent for units 2, 3 and 4, respectively (less than 90 percent due to the 0.05 lb/MMBtu NO_X lower limit assumed for SCR). For Cholla, the increase in sulfuric acid due to SCR was not simulated, because the baghouse (fabric filter) installed for particulate matter control would reduce this increased sulfate by 99 percent, resulting in a negligible effect on the visibility estimate. The 13 Class I areas within 300 km of Cholla were modeled; they are in the states of Arizona, Colorado, New Mexico, and Utah. The 98th percentile delta deciview using all three years of data together was computed for each area and emission scenario.

Table 20 shows baseline visibility impacts and the visibility improvement when controls are applied; the various table entries are described above in the discussion of the comparable table for Apache. The area with the greatest dv improvement was the Petrified Forest National Park; the improvement from SNCR was just under 0.5 dv and from SCR was 1.3 dv. Either of these improvements would contribute to improved visibility, with SCR being the superior option for visibility. The corresponding cumulative improvements are 2.7 and 7.2. Only SCR gives improvements exceeding 0.5 dv, and it does so at eight areas, two of which have improvements above a full 1 dv. The modeled degree of visibility

[108] We recognize that there are more aggressive approaches we could adopt that could justify the use of higher capacity factors, which would thereby lower the cost per ton of pollutant reduced. For example, instead of using historical data to develop a capacity factor value for each unit, we could use a single capacity factor value for each unit, one that represented a reasonable depiction of anticipated annual baseload operations. Alternately, we could also use the capacity factor estimates from APS' Cholla BART analyses, as based on a 2001–06 time frame, or develop new capacity factors based on a longer 2001 to 2011 time frame.

improvements supports SCR as BART for Cholla.

TABLE 20—CHOLLA UNITS 2, 3 AND 4: EPA'S VISIBILITY IMPROVEMENT FROM NO_X CONTROLS

Class I area	Baseline impact (dv)	Improvement from SNCR (dv)	Improvement from SCR (dv)
Capitol Reef NP	1.46	0.27	0.76
Galiuro WA	0.45	0.05	0.14
Gila WA	0.70	0.09	0.22
Grand Canyon NP	2.22	0.37	1.06
Mazatzal WA	1.19	0.16	0.43
Mesa Verde NP	1.34	0.26	0.70
Mount Baldy WA	1.21	0.27	0.52
Petrified Forest NP	4.53	0.47	1.34
Pine Mountain WA	0.85	0.12	0.31
Saguaro NP	0.30	0.02	0.05
Sierra Ancha WA	1.36	0.20	0.51
Superstition WA	1.27	0.17	0.51
Sycamore Canyon WA	1.42	0.27	0.68
Cumulative dv	18.30	2.71	7.21
# areas >=0.5	11	0	8
$/max dv, millions	.....	$17.8	$20.8
$/cumulative dv, millions	.....	$3.1	$3.8

c. EPA's BART Determination

As noted above, the remaining useful life of the source is incorporated into control cost calculations as a 20-year amortization period. In addition, the presence of existing pollution control technology is reflected in the cost and visibility factors as a result of selection of the baseline period for cost calculations and visibility modeling. For Cholla Units 2, 3, and 4, a baseline period (2011) was selected that reflects the currently existing pollution control technology (LNB with OFA). In examining energy and non-air quality impacts, we note certain potential impacts resulting from the use of ammonia injection associated with the SNCR and SCR control options, but do not consider these impacts sufficient enough to warrant eliminating any of the available control technologies.

Our consideration of degree of visibility improvement focuses primarily on the improvement from base case impacts associated with each control option. While each of the available NO_X control options achieves some degree of visibility improvement, we consider the improvement associated with the most stringent option, SCR with LNB and OFA, to be substantial.

Our consideration of cost of compliance focuses primarily on the cost-effectiveness of each control option, as measured in cost per ton and incremental cost per ton of each control option. Despite the fact that the most stringent option, SCR with LNB and OFA, is the most expensive of the available control options, we consider it cost-effective on average basis as well as on an incremental basis when compared to the next most stringent option, SNCR with LNB and OFA.

As a result, we consider the most stringent available control option, SCR with LNB and OFA, to be both cost-effective and to result in substantial visibility improvement, and that the energy and non-air quality impacts are not sufficient to warrant eliminating it from consideration. Therefore, we propose to determine that NO_X BART for Cholla Units 2, 3, and 4 is SCR with LNB and OFA, with an associated emission limit for NO_X on each of Units 2, 3, and 4 of 0.050 pounds per million British thermal units (lb/MMBtu), based on a rolling 30-boiler-operating-day average.

3. Coronado Units 1 and 2

a. Costs of Compliance

Our general approach to calculating the costs of compliance is described in section VII.A.2 above, while considerations unique to Coronado Units 1 and 2 are explained herein. There are several aspects of our analysis of this factor that differ from ADEQ's and SRP's analysis and we describe the most important elements below.

i. Selection of Baseline Period and Baseline Control Technology

SRP's BART analysis used a 2001–03 time period in order to establish its baseline NO_X emissions. Since that time period, SRP has since installed LNB with OFA on Coronado Units 1 and 2. In order to ensure that actual conditions at the plant are reflected in our baseline NO_X emissions, we decided to make use of the most recent Acid Rain Program emission data reported to CAMD, which, at the time that we began our analysis in 2011, was the three-year period from CY2008–10. Based on CAMD documentation, the low-NO_X burners were installed on Coronado Unit 1 on May 16, 2009, making it necessary for us to clearly distinguish between the pre-LNB and post-LNB periods of emission data for Coronado Unit 1. In our analysis, we have decided to make use of CAMD emission data corresponding to the post-LNB period extending from May 16, 2009 to December 31, 2010. We believe the use of this more recent baseline period represents the most realistic depiction of anticipated annual emissions, as it reflects operation of Coronado Unit 1 with LNB and OFA.

For Coronado Unit 2, we note that a consent decree between SRP and EPA requires the installation of SCR and compliance with an emission limit of 0.080 lb/MMBtu (30-day rolling average) by June 1, 2014.[109] Although we realize this SCR system has not yet been installed on Coronado Unit 2, this limit is federally enforceable and represents a realistic depiction of anticipated future emissions.[110] As a result, we consider 0.080 lb/MMBtu to be the baseline emission rate in our BART analysis and are examining only one control scenario

[109] See Docket Item G–01, ''Consent Decree Between U.S. and SRP (final as entered).'' See also ADEQ Title V Permit Renewal Number 52639, SRP—Coronado Generating Station, section II.E.1.a.iii (December 06, 2011).

[110] See 40 CFR part 51, appendix Y, Section IV.D.4.d.

in our analysis for Unit 2, SCR at a more stringent emission rate of 0.050 lb/MMBtu.[111]

ii. SCR Control Efficiency

In determining the control efficiency of SCR in our BART analysis, we have relied upon an SCR level of performance of 0.05 lb/MMBtu, which is more stringent than the level of performance used by ADEQ in its SIP, or by SRP in its Coronado BART analysis. In the Coronado BART analysis submitted to ADEQ, SRP indicated an SCR level of performance of 0.08 lb/MMBtu, and noted that ''If inlet NO_X concentrations are less than 250 ppmvd, SCR can achieve NO_X control efficiencies ranging only from 70 to 80 percent.'' [112] SRP suggests that the 75 percent reduction (and associated 0.08 lb/MMBtu emission rate) it estimates for SCR is the result of low inlet NO_X concentration, but does not provide specific information regarding inlet NO_X concentration at Coronado, or how a 75 percent reduction was determined. Our control cost calculations for the SCR control option at Coronado Unit 1 are based upon the SCR control efficiency summarized below. This control efficiency reflects the emission reductions associated with controlling from an annual average baseline emission rate that represents LNB+OFA (as described previously) down to an SCR emission rate of 0.05 lb/MMBtu.

TABLE 21—CORONADO UNIT 1: EPA'S SCR CONTROL EFFICIENCY

Unit No.	Baseline emission rate (lb/MMBtu)	SCR emission rate	SCR control efficiency (percentage)
Coronado 1	0.303	0.05	83.5

iii. Capacity Factor

SRP did not calculate annual emission estimates for its control scenarios, in tons per year, in its BART analysis submitted to ADEQ. In developing its RH SIP, ADEQ estimated annual emission reductions based upon 8,760 hours/year of operation (i.e., 100 percent capacity factor). We have calculated annual emission estimates for our control scenarios using capacity factors developed over a CY2008–11 time frame. The annual capacity factors we have used for each unit are 81 percent (Coronado 1), and 89 percent (Coronado 2). We recognize that these capacity factors are lower than those used by ADEQ, and that by using these lower capacity factors, our estimates of total annual emissions (and correspondingly, the annual emission reductions) for each control scenario are lower than ADEQ's estimates.[113] Since cost-effectiveness ($/ton) is calculated by dividing annual control costs ($/year) by annual emission reductions (tons/year), the use of emission reductions based on lower capacity factors will increase the cost per ton of pollutant reduced.

We have elected to use the capacity factors specified above, as based on a 2008 to 2011 time frame, in order to remain consistent with the time frame used to develop baseline annual emissions for Coronado and the other power plants that are the subject of today's proposed action.[114]

iv. Summary and Conclusions Regarding Costs of Control

A summary of our control cost estimates for the various control technology options considered for Coronado Units 1 and 2 is in Table 22. Detailed cost calculations, including our contractor's report and cost calculation spreadsheets, are in our TSD.

TABLE 22—CORONADO UNITS 1 AND 2: EPA'S CONTROL COST SUMMARY

Control option	Emission factor (lb/MMBtu)	Emission rate		Emissions removed (tpy)	Annual cost ($/yr)	Cost-effectiveness ($/ton)	
		(lb/hr)	(tpy)			Average	Incremental (from previous)
Coronado 1							
OFA	NA; LNB+OFA is the currently installed technology						
LNB+OFA (baseline)	0.303	1,308	4,639	.....	.....	.....	.....
SNCR+LNB+OFA	0.21	915	3,248	1,392	3,825,556	2,749	.....
SCR+LNB+OFA	0.05	216	766	3,874	9,315,313	2,405	2,212
Coronado 2							
SCR@0.08 lb/MMBtu (baseline)	0.08	319	1,242	.....	[1] 8,721,636	.....	.....
SCR@0.05 lb/MMBtu	0.05	199	776	466	8,993,116	.....	583

[1] Annual cost for the baseline scenario is provided here only to allow calculation of the incremental cost associated with a control option of SCR@0.05 lb/MMBtu.

[111] A discussion of our rationale for considering SCR at an emission rate of 0.05 lb/MMBtu can be found in Section VII.A.2 (Control Effectiveness) of this notice.

[112] See Docket Item B–10, SRP Coronado BART Analysis, page 4–5

[113] We note that there are multiple reasons why our annual emission estimates (and estimates of emission removal) are lower than AEPCO's and ADEQ's estimates. We are not implying that the use of capacity factor is the sole, or even dominant, reason for this difference, simply that the use of lower capacity factors will result in lower annual emission estimates.

[114] We recognize that there are more aggressive approaches we could adopt that could justify the use of higher capacity factors, which would thereby lower the cost per ton of pollutant reduced. For example, instead of using historical data to develop a capacity factor value for each unit, we could use a single capacity factor value for each unit, one that represented a reasonable depiction of anticipated annual baseload operations. Alternately, we could also use a 100% capacity factor, or develop new capacity factors based on a longer 2001 to 2011 time frame.

For Coronado 1, our calculations indicate that the SCR-based control option has an average cost-effectiveness value of $2,405/ton and an incremental cost-effectiveness of $2,212/ton, both of which we consider cost-effective. As described further below, our analysis for Coronado 2 relied upon SCR at an emission rate of 0.08 lb/MMBtu as a baseline scenario. As a result, the only control option we examined for Coronado 2 was an SCR-based option at a more stringent level of performance, 0.05 lb/MMBtu. Our initial analysis indicates that the incremental cost-effectiveness of such an option is $583/ton, making it a control option that we would consider cost-effective. However, we received information from SRP indicating that design and construction of the SCR system for this unit are well under way. In its letter, SRP states that ''if SRP were required to abandon the current design, incur procurement losses, possibly remove foundations, and undertake new design and procurement, such steps would vastly increase the cost of the SCR retrofit.'' Since these types of additional costs were not factored into our original analysis, the average and incremental cost-effectiveness of requiring Coronado Unit 2 to meet an emissions limit of 0.050 lb/MMBtu may in fact be greater than indicated by our analysis. However, we intend to request further documentation in order to determine the extent of these costs and how they would affect our cost-effectiveness calculations. We will include all non-CBI material received in the docket for this action and will consider it as part of our final action. We are specifically interested in information from SRP concerning the number of layers of catalyst for the SCR at Unit 2, how they plan to manage replacement of the catalyst, and whether the catalyst could be installed and managed to allow Unit 2 to meet a lower emission limit than 0.08 lb/MMBtu.

Thus, our initial analysis of this factor indicates that the costs of compliance (average or incremental) are not sufficiently large to warrant eliminating any of the control options from consideration. However, we note that, based on preliminary information received from SRP, the average and incremental costs of achieving an emission rate of 0.050 lb/MMBtu at Unit 2 may be much greater than our initial analysis suggests.

b. Visibility Improvement

The overall modeling approach was described above; aspects of the modeling specific to Coronado are described here. LNB was installed on Unit 1 in mid-2009, and on Unit 2 in mid-2011. For Unit 1's NO_X emissions, the maximum daily emissions in EPA's CAMD database for 2008 to 2010 was used; the maximum post-LNB installation emissions occurred in late 2010. For unit 2 emissions, the consent decree-mandated NO_X emission limit of 0.08 lb/MMBtu was combined with the maximum heat rate from 2008–2010 CAMD data, which occurred in late 2008. Since this limit has a 30-day averaging time, daily emissions may be larger than the emissions EPA modeled; the emission and visibility benefit would also be larger. Thus, visibility benefits from control applied to the base case may actually be larger than presented here. The base case reflects LNB as the control in place on Unit 1, and SCR at 0.08 lb/MMBtu NO_X on Unit 2.

EPA evaluated SNCR applied to Unit 1, and SCR at 0.05 lb/MMBtu applied to both Units 1 and 2. SCR was assumed to give a control effectiveness of 83.5 percent for unit 1 (less than 90 percent due to the 0.05 lb/MMBtu NO_X lower limit assumed for SCR). SCR at 0.05 lb/MMBtu NO_X was assumed to give a control effectiveness of 37.5 percent over the base case 0.08 lb/MMBtu. As mentioned above, the SCR simulation accounted for the increase in sulfuric acid emissions due to catalyst oxidation of SO_2. However, the simulation with SNCR applied to unit 1 did not account for this effect. If this additional Unit 2 sulfate were accounted for, it could make some background ammonia unavailable to form visibility-affecting particulate from Unit 1's NO_X emissions, thus reducing the visibility impact and also the visibility benefit from SNCR. We expect this to have very little effect on the estimated SNCR visibility benefit, since it was computed relative to an alternative base case that likewise did not include the catalyst oxidation effect, but the visibility benefits from SNCR may thus be slightly less than reported here, weakening the case for SNCR.

Sixteen Class I areas within 300 km of Coronado were modeled; they are in the states of Arizona, Colorado, and New Mexico. A 17th area, the Bosque del Apache Wilderness Area in New Mexico, was inadvertently omitted. Since it is in the same general direction from Coronado as the Gila Wilderness Area, but farther way, visibility impacts and control benefits at Bosque del Apache are likely to be lower than for Gila, so the maximum dv benefit would not be affected by this omission. However, the cumulative impacts and benefits would be higher than reported here since Bosque del Apache is omitted from the sum. The 98th percentile delta deciviews over all three years of data were computed for each area and emission scenario.

Table 23 shows baseline visibility impacts and the visibility improvement when controls are applied; the various table entries are described above in the discussion of the comparable table for Apache. The area with the greatest dv improvement was the Gila Wilderness Area; there is an improvement of 0.3 dv from SNCR, 0.6 dv from SCR on unit 1, and 0.7 dv from SCR at 0.05 lb/MMBtu on both units. These improvements are smaller than for the other facilities because the benefit from SCR at 0.08 lb/MMBtu on unit 2 is subsumed in the baseline. Any of these improvements would contribute to improved visibility, though SNCR on unit 2 only marginally so. SCR is the superior option for visibility, with the more stringent SCR at 0.05 lb/MMBtu on unit 2 giving a slightly greater benefit than when that limit is applied only to unit 1. The cumulative improvements corresponding to the three control scenarios are 1.3 dv, 2.8 dv, and 3.1 dv. Only the SCR scenarios give improvements exceeding 0.5 dv. The modeled degree of visibility improvements supports either SCR scenario as BART for Coronado.

TABLE 23—CORONADO UNITS 1 AND 2: EPA'S VISIBILITY IMPROVEMENTS FROM NO_X CONTROLS

Class I area	Baseline impact (dv)	Improvement from SNCR on unit 1 (dv)	Improvement from SCR .05 on unit 1 (dv)	Improvement from SCR, 0.05 lb/MMBtu (dv)
Bandelier NM	0.37	0.07	0.19	0.20
Chiricahua NM	0.20	0.03	0.07	0.08
Chiricahua WA	0.21	0.04	0.08	0.09
Galiuro WA	0.20	0.03	0.08	0.09
Gila WA	1.23	0.33	0.60	0.66

TABLE 23—CORONADO UNITS 1 AND 2: EPA'S VISIBILITY IMPROVEMENTS FROM NO_X CONTROLS—Continued

Class I area	Baseline impact (dv)	Improvement from SNCR on unit 1 (dv)	Improvement from SCR .05 on unit 1 (dv)	Improvement from SCR, 0.05 lb/MMBtu (dv)
Grand Canyon NP	0.24	0.03	0.10	0.11
Mazatzal WA	0.20	0.03	0.06	0.07
Mesa Verde NP	0.40	0.10	0.19	0.20
Mount Baldy WA	0.87	0.16	0.42	0.44
Petrified Forest NP	1.22	0.22	0.47	0.56
Pine Mountain WA	0.14	0.02	0.04	0.05
Saguaro NP	0.12	0.01	0.03	0.04
San Pedro Parks WA	0.54	0.11	0.28	0.30
Sierra Ancha WA	0.24	0.04	0.06	0.07
Superstition WA	0.21	0.02	0.06	0.06
Sycamore Canyon WA	0.16	0.02	0.06	0.06
Cumulative dv	6.54	1.25	2.78	3.07
# areas >=0.5	4	0	1	2
$/max dv, millions	.....	$11.9	$16.2	$15.0
$/cumulative dv, millions	.....	$3.1	$3.5	$3.2

Note: Costs of implementing SCR at 0.08 lb/MMBtu on unit 2 are not included.

c. EPA's BART Determinations

As noted above, we have considered the remaining useful life of the source by incorporating a 20-year amortization period into our control cost calculations. The presence of existing pollution control technology is reflected in the cost and visibility factors as a result of selection of the baseline period for cost calculations and visibility modeling. For Coronado Unit 1, a baseline period (May 2009 to December 2010) was selected that reflects the currently existing pollution control technology (LNB with OFA). For Coronado Unit 2, a baseline of 0.080 lb/MMBtu was selected to reflect the requirements of the consent decree decribed above. In addition, as noted above, we have received information from SRP indicating that the design and construction of SCR at Unit 2 have aleady progressed significantly. To the extent that we receive additional documentation establishing the status of this effort, we will take this information into consideration under the factors of ''costs of compliance'' and ''existing controls.''

In examining energy and non-air quality impacts, we note certain potential impacts resulting from the use of ammonia injection associated with the SNCR and SCR control options, but do not consider these impacts sufficient enough to warrant eliminating any of the available control technologies.

Our consideration of degree of visibility improvement focuses primarily on the improvement from base case impacts associated with each control option. While each of the available NO_X control options achieves some degree of visibility improvement, we consider the improvement associated with the most stringent option, SCR with LNB and OFA, to be substantial. Our consideration of cost of compliance focuses primarily on the cost-effectiveness of each control option, as measured in cost per ton and incremental cost per ton of each control option. Despite the fact that the most stringent option, SCR with LNB and OFA, is the most expensive of the available control options, we consider it cost-effective on average basis as well as on an incremental basis when compared to the next most stringent option, SNCR with LNB and OFA.

As a result, we consider the most stringent available control option, SCR with LNB and OFA, to be cost-effective and to result in substantial visibility improvement, and that the energy and non-air quality impacts are not sufficient to warrant eliminating it from consideration. Therefore, we propose to determine that NO_X BART for Coronado Units 1 and 2 is SCR with LNB and OFA. At Unit1 we propose an emission limit for NO_X of 0.050 lb/MMBtu, based on a rolling 30-boiler-operating-day average.

At Unit 2, we propose an emission limit of 0.080 lb/MMBtu, which is consistent with the emission limit in the consent decree. We acknowledge that the emission limit of 0.080 lb/MMBtu established in the consent decree was not the result of a BART five-factor analysis, nor does the consent decree indicate that SCR at 0.080 lb/MMBtu represents BART. Nonetheless, given the compliance schedule established in the consent decree and the preliminary information received from SRP regarding the status of design and construction of the SCR system, it appears that achieving a 0.050 lb/MMBtu emission rate may not be technically feasible. Even if it is feasible, achievement of this emission rate may not be cost-effective. Therefore, we are proposing an emission limit of 0.080 lb/MMBtu as BART for NO_X at Unit 2. However, if we do not receive sufficient documentation establishing that achievement of a more stringent limit is infeasible or not cost-effective, then we may determine that a more stringent limit for this unit is required in our final action.

For Coronado Unit 2, we are proposing a compliance date of June 1, 2014 for the NO_X limit, consistent with the consent decree described above.

Finally, at Coronado Unit 1, we are proposing to require compliance with the NO_X limit within five years of final promulgation of this FIP consistent with the compliance times for the NO_X limits at the other units. However, we are seeking comment on whether a shorter compliance schedule may be practicable for this unit.

C. Enforceability Requirements

In order to meet the requirements of the RHR and the CAA and to ensure that the BART limits are practically enforeceable, we propose to include the following elements in the FIP:

1. Requirements for use of continuous emission monitoring systems (CEMS) (and associated quality assurance procedures) to determine compliance with NO_X and SO_2 limits.

2. Use of 30-day rolling averaging period and definition of boiler operating day, consistent with the BART Guidelines.

3. Requirements for annual performance stack tests and implementation of Compliance Assurance Monitoring (CAM) plan to establish compliance with PM emission limits.

4. Recordkeeping and reporting requirements.

5. Requirement to maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions.

The foregoing requirements would apply to all units.

In addition, we are proposing specific compliance deadlines for each of ADEQ's BART emissions limits that we are proposing to approve. In most instances, the control technologies required to meet these limits have already been installed. See Table 3. Therefore, we are proposing to require compliance with the applicable emissions limits for PM and SO_2 within 180 days of final promulgation of this FIP, except that at Cholla Unit 2, we propose to require compliance with the PM limit by January 1, 2015, consistent with ADEQ's BART determination.

Regarding NO_X, we propose to allow up to five years from final promulgation of this FIP for each unit subject to an emission limit consistent with SCR, with the exception of Coronado Unit 2. This proposal is based on the results of two analyses of SCR installation times, as summarized in EPA Region 6's Complete Response to Comments for NM Regional Haze/Visibility Transport FIP.[115] An analysis performed by EPA Region 6, based on a review of a number of sources, found that the design and installation of SCR took between 18 and 69 months. A separate analysis performed for the Utility Air Regulatory Group (UARG) found that it took 28 to 62 months to design and install the 14 SCRs in its sample.[116] In the case of the BART FIP for San Juan Generating Station, EPA Region 6 initially proposed to allow a three-year compliance time frame for design and installation of SCR, but ultimately allowed for a five-year compliance schedule.[117] We also note that SCR installations often trigger Prevention of Significant of Deterioration permitting requirements because they constitute physical changes to an existing emission unit that may result in increased emissions of sulfuric acid mist. Therefore, we are proposing a five-year compliance time frame, which would provide adequate time for SCR design and installation based on the high-end of the range of dates in the analyses cited above. However, we are seeking comment on whether these compliance dates are reasonable and consistent with the requirement of the CAA and the RHR that BART be installed ''as expeditiously as practicable.'' We are specifically seeking comment on whether the outage schedule for any of these units may warrant a shorter compliance schedule (up to five years). If we receive information during the comment period that establishes that a shorter compliance timeframe is appropriate for one or more of these units, we may finalize a different compliance date.

VIII. Summary of EPA's Proposed Action

Based on the available control technologies and the five factors discussed in more detail below, EPA is proposing to require these facilities to meet NO_X, PM_{10} and SO_2 emission limits as listed in Table 24. With the exception of Apache Unit 1, the NO_X emission limits in Table 24 are proposed as part of EPA's FIP, based on the five factor analyses summarized in Section VII. The PM_{10} and SO_2 emission limits in Table 24 are taken from ADEQ's BART determinations for these facilities, proposed for EPA approval in this action. EPA is seeking comment on alternative PM_{10} and SO_2 emissions limits for Apache Generating Station Units 2 and 3; Cholla Power Plant Units 2, 3 and 4; and Coronado Units 1 and 2 as described in Section VI.B. We are also seeking comment on whether a test method other than EPA Method 201/202 should be allowed or required for establishing compliance with the PM_{10} limits that we are proposing to approve. Finally, we are proposing compliance dates and specific requirements for monitoring, recordkeeping, reporting and equipment operation and maintenance for all of the units covered by this action. Our proposed compliance dates are summarized in Table 25. We are seeking comment on whether these compliance dates are reasonable and consistent with the requirement of the CAA and the RHR that BART be installed ''as expeditiously as practicable.'' We are also taking comment on whether it would be technically feasible and cost-effective for Coronado Unit 2 to meet an emissions limit of 0.050 lb/MMBtu for NO_X.

EPA takes very seriously a decision to disapprove a state plan. In this instance, we believe that Arizona's SIP meets the CAA requirements with respect to its SO_2 and PM_{10} limits, but the NO_X BART determinations for the coal-fired units are neither consistent with the requirements of the Act nor with BART decisions that other states have made. As a result, EPA considers that this proposed disapproval is the only path that is consistent with the Act at this time.

TABLE 24—SUMMARY OF BART EMISSION LIMITS

Unit	Emission limitation (lb/MMBtu) (rolling 30-boiler-operating-day average)		
	NO_X	PM_{10}	SO_2
Apache Generating Station Unit 1	0.056	0.0075	0.00064
Apache Generating Station Unit 2	0.050	0.03	0.15
Apache Generating Station Unit 3	0.050	0.03	0.15
Cholla Power Plant Unit 2	0.050	0.015	0.15
Cholla Power Plant Unit 3	0.050	0.015	0.15
Cholla Power Plant Unit 4	0.050	0.015	0.15
Coronado Generating Station Unit 1	0.050	0.03	0.08
Coronado Generating Station Unit 2	0.080	0.03	0.08

[115] Available on regulations.gov, docket no. EPA–R06–OAR–2010–0846, pp. 70–72. See also 76 FR at 52408–09.

[116] J. Edward Cichanowicz, Implementation Schedule for Selective Catalytic Reduction (SCR) and Flue Gas Desulfurization (FGD) Process Equipment (Oct. 10, 2010).

[117] 76 FR at 52408–09.

TABLE 25—SUMMARY OF BART COMPLIANCE DATES

Unit	Compliance date		
	NO_X	PM_{10}	SO_2
Apache Generating Station Unit 1	Five years	180 days	180 days.
Apache Generating Station Unit 2	Five years	180 days	180 days.
Apache Generating Station Unit 3	Five years	180 days	180 days.
Cholla Power Plant Unit 2	Five years	January 1, 2015	180 days.
Cholla Power Plant Unit 3	Five years	180 days	180 days.
Cholla Power Plant Unit 4	Five years	180 days	180 days.
Coronado Generating Station Unit 1	Five years	180 days	180 days.
Coronado Generating Station Unit 2	June 1, 2014	180 days	180 days.

TABLE 26—SUMMARY OF ARIZONA'S PROPOSED BART EMISSION LIMITS

Unit	Emission limitation (lb/MMBtu) (rolling 30-boiler-operating-day average)		
	NO_X	PM_{10}	SO_2
Apache Generating Station Unit 1	0.056	0.0075	0.00064
Apache Generating Station Unit 2	n/a	0.03	0.15
Apache Generating Station Unit 3	n/a	0.03	0.15
Cholla Power Plant Unit 2	n/a	0.015	0.15
Cholla Power Plant Unit 3	n/a	0.015	0.15
Cholla Power Plant Unit 4	n/a	0.015	0.15
Coronado Generating Station Unit 1	n/a	0.03	0.08
Coronado Generating Station Unit 2	n/a	0.03	0.08

TABLE 27—SUMMARY OF EPA'S PROPOSED FIP BART EMISSION LIMITS

Unit	Emission limitation (lb/MMBtu) (rolling 30-boiler-operating-day average)		
	NO_X	PM_{10}	SO_2
Apache Generating Station Unit 1	n/a	n/a	n/a
Apache Generating Station Unit 2	0.050	n/a	n/a
Apache Generating Station Unit 3	0.050	n/a	n/a
Cholla Power Plant Unit 2	0.050	n/a	n/a
Cholla Power Plant Unit 3	0.050	n/a	n/a
Cholla Power Plant Unit 4	0.050	n/a	n/a
Coronado Generating Station Unit 1	0.050	n/a	n/a
Coronado Generating Station Unit 2	0.080	n/a	n/a

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed 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). As discussed in detail in section C below, the proposed FIP applies to only three facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to just three facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 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; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field. Firms primarily engaged in the generation, transmission, and/or distribution of electric energy for sale are small if, including affiliates, the total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. AEPCO sold under 3 million megawatt hours in 2011. APS and SRP are not small entities. After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The FIP for the three Arizona facilities being proposed today does not impose new requirements on a substantial number of small entities. The proposed partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985). Although a regulatory flexibility analysis as specified by the RFA is not required when a rule has some impact on one small entity, EPA policy is to assess the direct adverse impact of every rule on small entities and minimize any adverse impact to the extent feasible, regardless of the magnitude of the impact or number of small entities affected.[118] Using easily available public information,[119] EPA estimates that the annualized cost of requiring SCR in Units 1 and 2 would likely be in the range of 3 percent of AEPCO's assets and between 6 and 7 percent of AEPCO's annual sales. EPA requested information from AEPCO on the economics of operating Apache Generating Station and what impact the installation of SCR may have on the economics of operating Apache Generating Station.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA

[118] See Docket Item A–22 Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business and Regulatory Enforcement Fairness Act, November 2006 at 3.

[119] See Docket Item H–1 Arizona Electric Power Cooperative, Inc. Annual Report Electric for Year Ending December 31, 2011 submitted to Arizona Corporation Commission Utilities Division, available at *http://www.azcc.gov/Divisions/Utilities/Annual%20Reports/2011/Electric/Arizona_Electric_Power_Cooperative_Inc.pdf.*

to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885,April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of NO_X, SO_2, and PM_{10}, the rule will have a beneficial effect on children's health by reducing air pollution.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed federal rule limits emissions of NO_X, from three facilities in Arizona. The partial approval of the SIP for SO_2, and PM_{10}, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

List of Subjects in 40 CFR Part 52

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

Dated: July 2, 2012.

Jared Blumenfeld,

Regional Administrator, Region 9.

Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Add paragraph (e) to § 52.145, to read as follows:

§ 52.145 Visibility Protection.

* * * * *

(e) *Federal implementation plan for regional haze.*

(1) *Applicability.* This paragraph (e) applies to each owner/operator of the following coal-fired electricity generating units (EGUs) in the state of Arizona: Apache Generating Station, Units 2 and 3; Cholla Power Plant, Units 2, 3, and 4; and Coronado Generating Station, Units 1 and 2. This paragraph (e) also applies to each owner/operator of the following natural gas-fired EGU in the state of Arizona: Apache Generating Station Unit 1. The provisions of this paragraph (e) are severable, and if any provision of this paragraph (e), or the application of any provision of this paragraph (e) to any owner/operator or circumstance, is held invalid, the application of such provision to other owner/operators and other circumstances, and the remainder of this paragraph (e), shall not be affected thereby.

(2) *Definitions.* Terms not defined below shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (e):

ADEQ means the Arizona Department of Environmental Quality.

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

Coal-fired unit means any of the EGUs identified in paragraph (e)(1) of this section, except for Apache Generating Station, Unit 1.

Continuous emission monitoring system or *CEMS* means the equipment required by 40 CFR part 75 and this paragraph (e).

Emissions limitation or emissions limit means the Federal emissions limitation required by this paragraph (e) and the applicable PM_{10} and SO_2 emissions limits for Apache Generating Station, Cholla Power Plant, and Coronada Generating Station submitted to EPA as part of the Arizona Regional Haze State Implementation Plan in a letter dated February 28, 2011 and approved into the Arizona state implementation plan on [INSERT DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].

lb means pound(s).

NO_X means nitrogen oxides expressed as nitrogen dioxide (NO_2).

Owner(s)/operator(s) means any person(s) who own(s) or who operate(s), control(s), or supervise(s) one more of

the units identified in paragraph (e)(1) of this section.

MMBtu means million British thermal unit(s).

Operating hour means any hour that fossil fuel is fired in the unit.

Pipeline natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions, and which is provided by a supplier through a pipeline. Pipeline natural gas contains 0.5 grains or less of total sulfur per 100 standard cubic feet. Additionally, pipeline natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot.

PM_{10} means filterable total particulate matter less than 10 microns and the condensable material in the impingers as measured by Methods 201A and 202.

Regional Administrator means the Regional Administrator of EPA Region IX or his/her authorized representative.

SO_2 means sulfur dioxide.

Unit means any of the EGUs identified in paragraph (e)(1) of this section.

(3) *Emission Limitations.* The owner/operator of each unit subject to this paragraph (e) shall not emit or cause to be emitted NO_X in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu). Each emission limit shall be based on a rolling 30-boiler-operating-day average, unless otherwise indicated in specific paragraphs. Apache Generating Station Unit 1 shall operate only on pipeline natural gas.

Unit	Federal emission limit NO_X
Apache Generating Station Unit 1	0.056
Apache Generating Station Unit 2	0.050
Apache Generating Station Unit 3	0.050
Cholla Power Plant Unit 2	0.050
Cholla Power Plant Unit 3	0.050
Cholla Power Plant Unit 4	0.050
Coronado Generating Station Unit 1	0.050
Coronado Generating Station Unit 2	0.08

(4) *Compliance Dates.*

i. The owners/operators of each unit subject to paragraph (e) shall comply with the emissions limitations and other requirements of this paragraph (e) as expeditiously as practicable, but in no event later than the following dates:

Unit	Compliance date		
	NO_X	PM_{10}	SO_2
Apache Generating Station, Unit 1	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Apache Generating Station, Unit 2	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Apache Generating Station, Unit 3	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Cholla Power Plant, Unit 2	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	January 1, 2015	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Cholla Power Plant, Unit 3	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Cholla Power Plant, Unit 4	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**]
Coronado Generating Station, Unit 1.	[INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]
Coronado Generating Station, Unit 2.	June 1, 2014	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**].	[INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL ACTION IN THE **Federal Register**]

(5) *Compliance determinations for NO_X and SO_2.*

i. *Continuous emission monitoring system.*

A. At all times after the compliance date specified in paragraph (e)(4) of this section, the owner/operator of each coal-fired unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO_2, NO_X, diluent, and stack gas volumetric flow rate from each unit. Apache Unit 1 NO_X and diluent CEMs shall be operated to meet the requirements of Part 75. Valid data means data recorded when the CEMS is not out-of-control as defined by Part 75. All valid CEMS hourly data shall be used to determine compliance with the emission limitations for NO_X and SO_2 in paragraph (e)(3) of this section for each unit. When the CEMS is out-of-control as defined by Part 75, that CEMs data shall be treated as missing data and not used to calculate the emission average.

B. The owner/operator of each unit shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. In addition to these Part 75 requirements, relative accuracy test audits shall be performed for both the NO_X pounds per hour measurement and the heat input measurement. These shall have relative accuracies of less than 20%. This testing shall be evaluated each time the CEMS undergo relative accuracy testing. Heat input for Apache Unit 1 shall be measured in accordance with Part 75 fuel gas measurement procedures found in Part 75 Appendix D.

ii. *Compliance determinations for NO_X.*

A. The 30-day rolling average NO_X emission rate for each unit shall be calculated in accordance with the following procedure: First, sum the total pounds of NO_X emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; second, sum the total heat input to the unit in MMBtu during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; and third, divide the total number of pounds of NO_X emitted during the thirty (30) boiler-operating days by the total heat input during the thirty (30) boiler-operating days. A new 30-day rolling average NO_X emission rate shall be calculated for each new boiler operating day. Each 30-day rolling average NO_X emission rate shall include all emissions that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction.

B. If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30-day rolling average. Each unit must obtain valid hourly data for at least 90% of the operating hours for each calendar quarter.

iii. *Compliance determinations for SO_2.*

A. The 30-day rolling average SO_2 emission rate for each coal-fired unit shall be calculated in accordance with the following procedure: First, sum the total pounds of SO_2 emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; second, sum the total heat input to the unit in MMBtu during the current boiler-operating day and the previous twenty-nine (29) boiler-operating day; and third, divide the total number of pounds of SO_2 emitted during the thirty (30) boiler-operating days by the total heat input during the thirty (30) boiler-operating days. A new 30-day rolling average SO_2 emission rate shall be calculated for each new boiler operating day. Each 30-day rolling average SO_2 emission rate shall include all emissions that occur during all periods within any boiler-operating day, including emissions from startup, shutdown, and malfunction.

B. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the 30-day rolling average. Each unit must obtain valid hourly data for at least 90% of the operating hours for each calendar quarter.

(6) *Compliance Determinations for Particulate Matter.* Compliance with the particulate matter emission limitation for each coal-fired unit shall be determined from annual performance stack tests. Within sixty (60) days of the compliance deadline specified in paragraph (e)(4) of this section, and on at least an annual basis thereafter, the owner/operator of each unit shall conduct a stack test on each unit to measure PM–10 using 40 CFR part 51, appendix M, Method 201A/202. A test protocol shall be submitted to EPA a minimum of 30 days prior to the scheduled testing. Each test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. Results shall be reported in lb/MMBtu using the calculation in 40 CFR part 60 appendix A Method 19. In addition to annual stack tests, owner/operator shall monitor particulate emissions for compliance with the emission limitations in accordance with the applicable Compliance Assurance Monitoring (CAM) plan developed and approved in accordance with 40 CFR part 64. The averaging time for any other demonstration of the PM–10 compliance or exceedance shall be based on a 6-hour average.

(7) *Recordkeeping.* The owner or operator of each unit shall maintain the following records for at least five years:

a. All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

b. Daily 30-day rolling emission rates for NO_X and SO_2 for each unit, calculated in accordance with paragraph (e)(5) of this section.

c. Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

d. Records of the relative accuracy test for NO_X and SO_2 lb/hr measurement and hourly heat input.

e. Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

f. Any other records required by 40 CFR part 75.

(8) *Reporting.* All reports and notifications under this paragraph (e) shall be submitted to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105.

a. The owner/operator shall notify EPA within two weeks after completion of installation of combustion controls or Selective Catalytic Reactors on any of the units subject to this section.

b. Within 30 days after the applicable compliance date(s) in paragraph (e)(4) of this section and within 30 days of the end of each calendar quarter thereafter, the owner/operator of each unit shall submit a report that lists the daily 30-day rolling emission rates for NO_X and SO_2 for each unit, calculated in accordance with paragraph (e)(5) of this section. Included in this report shall be the results of any relative accuracy test audit performed during the calendar quarter.

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation

of any standard or applicable emission limit in the plan.

(10) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(11) *Affirmative Defense for Malfunctions.* The following regulations are incorporated by reference and made part of this federal implementation plan: Rules R18–2–310 and R18–2–310.01, approved into the Arizona SIP at 40 CFR 52.120(c)(97)(i)(A).

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1090
Defining Larger Participants of the Consumer Reporting Market; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1090

[Docket No. CFPB–2012–0005]

RIN 3170–AA00

Defining Larger Participants of the Consumer Reporting Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. That statute grants the Bureau authority to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank ''larger participant[s]'' of markets for other consumer financial products or services, as the Bureau defines by rule. An initial rule to define such larger participants must be issued by July 21, 2012. The Bureau issues this final rule to define larger participants of a market for consumer reporting. The final rule thereby facilitates the supervision of nonbank covered persons active in that market.

DATES: Effective September 30, 2012.

FOR FURTHER INFORMATION CONTACT: Christopher Young, Senior Counsel, (202) 435–7408, or Nicholas Krafft, Consumer Financial Protection Analyst, (202) 435–7252, Office of Nonbank Supervision, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On February 17, 2012, the Bureau published a notice of proposed rulemaking proposing tests for defining larger participants of two markets identified by the Bureau: consumer reporting and consumer debt collection. The Bureau issues this final rule to define larger participants of a market for consumer reporting. After the issuance of this final rule, the Bureau will take further action regarding the proposed consumer debt collection market. This initial rule to define larger participants will be followed by a series of rulemakings covering additional markets for consumer financial products and services.

I. Overview

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] established the Bureau of Consumer Financial Protection (Bureau) on July 21, 2010. One of the Bureau's responsibilities under the Dodd-Frank Act is the supervision of certain nonbank covered persons,[2] and very large banks, thrifts, and credit unions and their affiliates.[3]

Under 12 U.S.C. 5514, the Bureau has supervisory authority over nonbank covered persons of any size offering or providing three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[4] The Bureau also has supervisory authority over ''larger participant[s] of a market for other consumer financial products or services,'' as the Bureau defines by rule.[5] The Bureau is authorized to supervise nonbank entities subject to 12 U.S.C. 5514 of the Dodd-Frank Act by requiring the submission of reports and conducting examinations to: (1) Assess compliance with Federal consumer financial law; (2) obtain information about such persons' activities and compliance systems or procedures; and (3) detect and assess risks to consumers and to consumer financial markets.[6] The Bureau is required to issue an initial larger participant rule by July 21, 2012.

This final rule establishes, in part, the scope of the Bureau's supervision authority for nonbank covered persons [7] under 12 U.S.C. 5514, by defining ''larger participants'' of a market for consumer reporting.[8] The Bureau intends the final rule to be the first in a series of rules to define larger participants of other markets. After the issuance of this rule, the Bureau will take further action relating to its notice of proposed rulemaking to define larger participants of a market for consumer debt collection.

The final rule pertains only to defining larger participants of a specified market and thereby delineating, in part, the scope of the Bureau's nonbank supervision authority. It does not impose new substantive consumer protection requirements. Nor does it delineate the scope of the Fair Credit Reporting Act (FCRA), provisions of the Dodd-Frank Act related to consumer reporting activities, or any other Federal consumer financial law. Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

II. Background

On June 29, 2011, through a notice and request for comment (Notice), the Bureau solicited public comment on developing a proposed larger participant rule.[9] The Bureau also held a series of roundtable discussions with industry, consumer and civil rights groups, and State regulatory agencies and associations.[10] The Bureau considered

[1] Public Law 111–203 (12 U.S.C. 5301 *et seq.*).

[2] The provisions of 12 U.S.C. 5514 apply to nondepository (nonbank) covered persons and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). A ''covered person'' means ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service''). Under 12 U.S.C. 5514(d), subject to certain exceptions, ''to the extent that Federal law authorizes the Bureau and another Federal agency to * * * conduct examinations, or require reports from a [nonbank covered person] under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to * * * conduct examinations [and] require reports * * * with regard to a [nonbank covered person], subject to those provisions of law.''

[3] *See* 12 U.S.C. 5515(a). The Bureau also has certain authorities relating to the supervision of other banks, thrifts, and credit unions. *See* 12 U.S.C. 5516(c)(1), (e). The Bureau notes that one of the objectives of the Dodd-Frank Act is to ensure that ''Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.'' 12 U.S.C. 5511(b)(4).

[4] 12 U.S.C. 5514(a)(1)(A), (D), and (E).

[5] 12 U.S.C. 5514(a)(1)(B), (a)(2). The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity * * * to respond,'' that such covered person ''is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C). The Bureau has published a notice of proposed rulemaking to establish uniform procedures relating to this provision of the Dodd-Frank Act. 77 FR 31226 (May 25, 2012).

[6] 12 U.S.C. 5514(b)(1).

[7] The Bureau's supervision authority also extends to service providers of covered persons subject to supervision under 12 U.S.C. 5514. *See* 12 U.S.C. 5514(e) (establishing the Bureau's supervisory authority relating to service providers); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[8] The final rule describes one market for consumer financial product or services, which the rule labels ''consumer reporting.'' The definition in the rule does not encompass all activities that could be considered consumer reporting. Any reference herein to ''the consumer reporting market'' means only the particular market for consumer reporting identified by the final rule.

[9] 76 FR 38059 (June 29, 2011).

[10] In July 2011, the Bureau held four roundtable discussions on the Notice. More than 70

the comments it received in connection with the Notice in developing a proposed rule to define larger participants of two markets for consumer financial products or services: consumer debt collection and consumer reporting. The Bureau published a notice of proposed rulemaking on February 17, 2012 (Proposed Rule or Proposal).[11] The Bureau requested and received public comment on the Proposed Rule.

The Proposed Rule defined certain terms, including ''affiliated company,'' ''annual receipts,'' ''consumer reporting,'' and ''nonbank covered person.'' The Proposed Rule also set forth a test for determining whether a nonbank covered person is a larger participant of the consumer reporting market.[12] Under this test, a nonbank covered person with more than $7 million in annual receipts resulting from consumer reporting activities described in the Proposed Rule would be a larger participant of the consumer reporting market. As defined in the Proposed Rule, the determination of annual receipts is generally derived from a three-year average of receipts. Under the Proposed Rule, once a nonbank covered person met a larger-participant test for a particular market, the person would retain larger-participant status for a period of at least two years. The Proposed Rule also set forth a procedure for a person to challenge an assertion by the Bureau that the person qualified as a larger participant of a covered market and a mechanism by which the Bureau could request information to assess whether a person is a larger participant.

The Bureau received 82 comments on the Proposed Rule from, among others, consumer groups, industry trade associations, companies, State financial services agencies, and individuals. These comments are discussed in more detail below in the section-by-section analysis of the final rule.

III. Summary of the Final Rule

The final rule is the first in what the Bureau intends to be a series of rules to define ''larger participants'' of specific markets for purposes of establishing, in part, the scope of coverage of the Bureau's nonbank supervision program. The rule contains two main components. Subpart A establishes general definitions, concepts, protocols, and procedures relating to the Bureau's supervision of larger participants and assessment of whether entities are larger participants. Subpart B identifies a market for consumer reporting, defines the term ''annual receipts'' for purposes of measuring participation in that market, and sets forth the test for assessing which entities are larger participants of that market. As the Bureau identifies additional markets in which to supervise larger participants, the Bureau expects to include the relevant market descriptions and larger-participant tests in Subpart B.

In its general provisions under Subpart A, the final rule defines terms relevant to the rule, such as ''affiliated company,'' ''consumer financial product or service,'' and ''nonbank covered person,'' adopting (with minor modifications) the proposed definitions for these terms. The final rule adopts the provision of the Proposed Rule that once a nonbank covered person qualifies as a larger participant, the person will be deemed a larger participant for a period not less than two years from the first day of the tax year in which the person last met the applicable test. The final rule also adopts the proposed procedure for a person to challenge that it qualifies as a larger participant, during a specified time period after being notified by the Bureau that the Bureau intends to conduct some type of supervision activity in connection with the person. However, in response to comments, the Bureau has extended the specified time period from 30 days to 45 days. To facilitate the Bureau's supervision of nonbank covered persons, to enable the Bureau to carry out the purposes and objectives of the Dodd-Frank Act relating to supervision, and to prevent evasion, the final rule also adopts the proposed provision that the Bureau may require submission of records, documents, and other information for purposes of assessing whether a person is a larger participant of a covered market.

Under Subpart B, the final rule defines the term ''consumer reporting'' by describing market-related activities; defines the term ''annual receipts,'' the criterion by which entities' level of participation in the consumer reporting market is measured; and sets forth the test for which participants are larger participants. The consumer reporting market, as defined in the final rule, includes consumer reporting agencies selling consumer reports, consumer report resellers, analyzers of consumer reports and other account information (analyzers), and specialty consumer reporting agencies (collectively referred to as consumer reporting entities). As a general matter, some consumer reporting agencies collect, among other information, information about credit accounts, items sent for collection, and public records such as judgments and bankruptcies. Resellers purchase consumer information from one or more of the agencies that collect information, typically provide further input to the consumer report (including by merging files from multiple agencies or adding information from other data sources), and then resell the report to lenders and other users. Analyzers apply statistical and other methods to consumer reports and other account information to facilitate the interpretation of such information and its use in decisions regarding other products and services. Certain analyzers develop and sell credit scoring services and products. Specialty consumer reporting agencies primarily collect and provide specific types of information that may be used to make decisions regarding particular consumer financial products or services, such as payday loans or checking accounts, or for other determinations, such as eligibility for employment or rental housing. However, some of these specialty consumer reporting agencies, depending on their activities, may not be engaged in offering or providing consumer financial products or services within the meaning of the Dodd-Frank Act, and therefore would not, on the basis of their activities, become ''covered persons'' subject to the Bureau's supervisory authority.[13] These exclusions are implemented in the definition of ''consumer reporting'' in the final rule.

As detailed in the Proposal, consumer reporting is a consumer financial product or service that is of fundamental importance to markets for many other consumer financial products and services. Consumer reports (sometimes referred to as ''credit reports''), which may contain information about consumers' credit histories and other transactions, and the

stakeholders participated, representing a diverse mix of nonbank and bank trade associations and consumer advocacy and civil rights groups. The roundtables focused on key issues regarding how to define larger participants, including what criteria to measure, where to set thresholds, available data sources, and which markets to cover. Also in July 2011, the Bureau held a multistate regulator and regulatory association conference call that had more than 40 participants.

[11] 77 FR 9592 (Feb. 17, 2012).

[12] As noted above, the Proposed Rule also addressed a market for consumer debt collection; that market will be the subject of a later publication.

[13] *See* 12 U.S.C. 5481(15)(A)(ix). Under the final rule, ''consumer reporting'' does not include the activities of a person to the extent that a person provides consumer report or other account information that is used or expected to be used solely regarding a decision for employment, government licensing, or a residential lease or tenancy involving a consumer, or to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service.

credit scores derived from credit files, affect many aspects of consumers' lives. Consumer reports are important tools that lenders use to assess borrower risk when evaluating applications for credit cards, home mortgage loans, automobile loans, and other types of credit. Consumer reports may also be used to determine eligibility and pricing for other types of products and services, such as checking accounts. The consumer reporting market affects hundreds of millions of consumers. The Consumer Data Industry Association (CDIA), a trade association that represents, among others, the consumer reporting industry, estimates that each year there are more than 36 billion updates made to consumer files at consumer reporting agencies,[14] and three billion reports issued.[15] It also estimates that each of the three largest consumer reporting agencies maintains credit files on more than 200 million consumers.[16] Because of the significant connections between consumer reporting and other consumer financial products and services, supervision of consumer reporting will further the Bureau's mission to ensure that all consumers have access to fair, transparent, and competitive markets for such products and services.[17]

The final rule establishes a test, based on ''annual receipts,'' to assess whether a nonbank covered person is a larger participant of the consumer reporting market. The definition of ''annual receipts'' is adapted from the definition of the term used by the Small Business Administration (SBA) for purposes of defining small business concerns. The final rule adopts the proposed test for qualifying as a larger participant of the consumer reporting market: More than $7 million in annual receipts resulting from relevant consumer reporting activities. Covered persons meeting the test qualify as larger participants and are subject to the Bureau's supervision authority under 12 U.S.C. 5514. The test to assess larger-participant status set forth in the final rule is tailored to the consumer reporting market identified by the rule. The Bureau has not determined that annual receipts, or a threshold of $7 million in annual receipts, would be appropriate for any other market that may be the subject of a future larger participant rulemaking. Rather, the Bureau will tailor each test for defining larger participants to the market to which it will be applied.

IV. Legal Authority and Effective Date

A. Rulemaking Authority

The Bureau is issuing this final rule pursuant to its authority under: (1) 12 U.S.C. 5514(a)(1)(B) and (a)(2), which authorize the Bureau to supervise larger participants of markets for consumer financial products or services, as defined by rule, and require the Bureau to issue an initial such rule by July 21, 2012;[18] (2) 12 U.S.C. 5514(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under 12 U.S.C. 5514; and (3) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

B. Effective Date of Final Rule

The Bureau proposed an effective date of 30 days after the publication of the final rule, noting that the Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[19] The Bureau received a few comments requesting a postponement of the effective date.

Two industry commenters urged the Bureau to adopt an effective date at least 180 days after issuance of the final rule. One of these commenters, representing the consumer reporting industry, asked the Bureau to consider the fact that some of the companies affected by the final rule have never been examined at the Federal or State level and will need time to develop processes and engage in training to prepare for examinations. Another commenter, representing online payday lenders, stated that the Bureau should adopt an effective date no earlier than six months after issuance of the final rule and one year after publication by the Bureau of final examination manuals and procedures for the markets covered in the Proposed Rule. This commenter noted that, unlike the various examination procedures for banks and lenders that the Bureau has released, any such procedures with respect to the covered markets published by the Bureau will be completely new, and industry will need time to prepare for examinations.

The Bureau appreciates the fact that supervision by a Federal agency will be new to many larger participants of the consumer reporting market. The Bureau does not believe, however, that this is a sufficient reason for a substantial delay of the effective date of the final rule. The final rule itself does not impose substantive conduct requirements with respect to which larger participants might require time to come into compliance. Although larger participants might choose to increase their compliance with Federal consumer financial law in response to the possibility of supervision, market participants are already obligated to comply, and should already be in compliance with, applicable Federal consumer financial law, regardless of whether they are subject to supervision. Thus, entities that qualify as larger participants under the final rule should not require additional time to come into compliance with Federal consumer financial law. In addition, the Bureau is concerned that postponing the effective date by too much would unnecessarily delay the Bureau's supervision of larger participants of the consumer reporting market. This could adversely affect consumers because, among other reasons, the Bureau would be delayed, with respect to the consumer reporting activities covered by the rule, in assessing compliance with Federal consumer financial law, detecting and assessing risk to consumers, and obtaining information about activities and compliance systems or procedures, and thus delayed in taking any appropriate corrective action.

The Bureau believes that, for the reasons described above, a long postponement of the effective date as suggested by the commenters is not warranted. However, in balancing the requests for a longer pre-effective date period with the Bureau's view that too lengthy a period would be detrimental to consumers, the Bureau believes it is

[14] Stuart Pratt, President, CDIA, Statement Before House Committee on Financial Institutions and Consumer Credit, ''Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports, and their Impact on Consumers,'' at 7 (March 24, 2010), *available at* (*http://www.house.gov/apps/list/hearing/financialsvcs_dem/pratt_testimony.pdf*). *See also* Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003 at 8–9 (2004).

[15] *See* Stuart Pratt, President, CDIA, Statement Before House Committee on Financial Services, ''Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information,'' at 23 (June 19, 2007), *available at http://archives.financialservices.house.gov/hearing110/ospratt061907.pdf.*

[16] Stuart Pratt, Comments of CDIA to National Telecommunications and Information Administration, ''Information Privacy and Innovation in the Internet Economy,'' at 2 (June 13, 2010), *available at http://ntia.doc.gov/files/ntia/comments/100402174-0175-01/attachments/Consumer%20Data%20Industry%20Association%20Comments.pdf.*

[17] 12 U.S.C. 5511(a).

[18] July 21, 2012, is one year after the Bureau's ''designated transfer date.'' This was the date on which certain authorities transferred from other Federal agencies to the Bureau. 12 U.S.C. 5581; *see* 12 U.S.C. 5582 (mechanism for setting ''designated transfer date''); 75 FR 57252 (Sept. 20, 2010) (establishing ''designated transfer date'' as July 21, 2011).

[19] 5 U.S.C. 553(d).

reasonable to extend the effective date to September 30, 2012, to give entities some time to prepare for Federal supervision, and adopts this effective date for the final rule. As compared with the Proposal, this new effective date will provide more than double the time between the publication date and the date when entities may be subject to Bureau supervision under the rule.

V. Section-By-Section Analysis of the Final Rule [20]

Subpart A—General

Section 1090.100—Scope and Purpose

Proposed § 1090.100 set forth the scope and purpose of Part 1090. It stated that the Part defines those nonbank covered persons that qualify as larger participants of certain markets for consumer financial products or services, pursuant to 12 U.S.C. 5514(a)(1)(B) and (a)(2). Proposed § 1090.100 further explained that a larger participant of a market covered by the Part will be subject to the supervisory authority of the Bureau under 12 U.S.C. 5514. Finally, § 1090.100 provided that the Part establishes rules to facilitate the Bureau's supervisory authority over larger participants pursuant to 12 U.S.C. 5514(b)(7).

The Bureau received one comment recommending that the Bureau clarify that the scope and purpose of the final rule does not include the supervision of nonprofit organizations engaged in offering credit counseling services. This comment relates specifically to the market for consumer debt collection and will be addressed in the final rule for that market. The Bureau notes, however, that the Bureau does not believe that the scope and purpose section is the appropriate place to exclude any type of activity from a market covered by the final rule. Subpart B addresses the nature and scope of activities included in the market covered by the rule.

Section 1090.100 is adopted as proposed, with minor technical amendments for consistency.

Section 1090.101—Definitions

Section 1090.101 defines terms used in the final rule that are applicable both to the consumer reporting market and to other markets that may be addressed in future rulemakings. If a term is defined in the Dodd-Frank Act, the final rule generally incorporates that definition, with clarifications and modifications as appropriate. The Bureau received comments on a number of definitions set forth in the Proposed Rule and discusses the comments below in the context of the definition to which they relate.

Affiliated company. To compute activity levels for purposes of 12 U.S.C. 5514(a)(1) and its implementing rules, 12 U.S.C. 5514(a)(3)(B) provides that the activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated. The term ''affiliated company'' is not defined in the Dodd-Frank Act. The Proposed Rule defined the term ''affiliated company'' in a manner guided by the definition of ''affiliate'' set forth in the Dodd-Frank Act,[21] with modifications to track the requirements of 12 U.S.C. 5514(a)(3)(B). Thus, the Proposed Rule stated that the term ''affiliated company'' of a person means any company (other than an insured depository institution or insured credit union) that controls, is controlled by, or is under common control with the person.

For purposes of the definition of ''affiliated company,'' the Proposed Rule provided that the term ''company'' means any corporation, limited liability company, business trust, general or limited partnership, proprietorship, cooperative, association, or similar organization. The Bureau received one comment suggesting that this definition be revised to include professional corporations and professional limited liability companies. The Bureau believes that the proposed definition, which encompasses ''similar organization[s]'' to those expressly enumerated, is sufficiently broad to cover professional corporations and professional limited liability companies, as well as other forms of organization comparable to those on the enumerated list that exist or may arise. Thus, the Bureau deems the suggested amendment unnecessary.

Also for purposes of the definition of ''affiliated company,'' the Proposed Rule set forth when a person would be considered to have control over another person, guided by the definitions of the term ''control'' provided in section 2 of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841) and rules issued by other Federal financial regulators.[22] The proposed definition provided that a person has control over another person if: (i) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities or similar ownership interest of the other person; (ii) the person controls in any manner the election of a majority of the directors, trustees, members, or general partners of the other person; or (iii) the person directly or indirectly exercises a controlling influence over the management or policies of the other person, as determined by the Bureau.

The Bureau received a number of comments from consumer groups requesting that the Bureau include in the final rule provisions to prevent market participants from structuring business forms and activities to evade coverage as larger participants. For example, one commenter suggested that the Bureau should prevent evasion by aggregating not only the revenues of ''affiliated companies,'' but also those of ''joint enterprises,'' defined as two or more companies that act with a common purpose, in coordination, or through a contractual relationship to provide consumer financial products or services. Similarly, many consumer groups suggested aggregating the receipts of a firm's agents and contractors.

The Bureau understands commenters' concern regarding possible evasion of the final rule that could potentially occur by a market participant's structuring business activities through separate entities. For example, a covered person might attempt evasion by dividing its consumer reporting tasks among several unaffiliated companies, each having less than $7 million in annual receipts, to avoid Bureau supervision. However, control or common control is a prerequisite for being an ''affiliate'' under the Dodd-Frank Act; and the Bureau likewise proposed to make control or common control a prerequisite for being an ''affiliated company.'' [23] The Bureau further believes that the test for control in the Proposal, which considered, among other things, whether one person directly or indirectly exercises a controlling influence over the management or policies of another, provides an adequate tool to address the type of structuring to evade supervision coverage that the commenters describe. The Bureau therefore declines to amend

[20] The Bureau notes that the final rule is structured differently than the Proposed Rule. Unlike the Proposed Rule, the final rule is divided into Subparts A and B, as described in the Summary of Final Rule (Section III) above, resulting in different section numbers. This section-by-section analysis refers to the section numbers in the final rule except as otherwise noted.

[21] 12 U.S.C. 5481(1).

[22] See, *e.g.,* 12 CFR 41.3(i) (Office of the Comptroller of the Currency (OCC) rule defining ''common ownership or common corporate control'' in connection with the FCRA); 12 CFR 336.3(b) (Federal Deposit Insurance Corporation (FDIC) rule defining ''control'' in connection with post-employment restrictions on former FDIC examiners); 12 CFR 1805.104(q) (Department of the Treasury rule defining ''control'' in connection with the Community Development Financial Institutions Program).

[23] *See* 12 U.S.C. 5481(1) (definition of ''affiliate'').

the Proposal to require aggregation of the annual receipts of ''joint enterprises'' or of companies that have only a cooperative or contractual relationship but otherwise do not satisfy a test for control in the final rule.

A few industry commenters objected more generally to one concept of control recognized in the proposed definition, in which one person directly or indirectly exercises a controlling influence over the management or policies of another. These commenters stated that a potential larger participant would not know in advance which companies it is deemed to exercise a controlling influence over, and therefore how to calculate its aggregated annual receipts. Normally, the Bureau believes, a market participant could use reasonable judgment to determine whether it has an affiliated company whose annual receipts would be aggregated with its own. In addition, under the final rule, prior to undertaking supervisory activity in connection with a market participant, the Bureau would notify the participant of its intent; the market participant would then have the opportunity, pursuant to § 1090.103 of the final rule, to challenge its status as a larger participant, including on the ground that its annual receipts should not be aggregated with those of certain other companies. Accordingly, the Bureau believes that, in the context of the procedures set forth in the final rule, the proposed definition of ''control'' provides market participants sufficient advance guidance regarding their status as larger participants and does not believe it is necessary to amend the proposed test for control to address these commenters' concerns. Moreover, as indicated above, the Bureau believes it is necessary and appropriate to have a definition of ''control'' that is sufficiently flexible to prevent evasion of the rule.

One commenter also expressed concern that if a large company handles a small firm's day-to-day operations, as a service, the larger firm would be considered to exercise a controlling influence. Therefore, according to this commenter, the ''controlling influence'' test for control could distort the market for such services. It could also, this commenter said, unfairly sweep a small firm into the category of larger participants, based solely on the small firm's use of a larger participant for such operational services. As defined in the Proposed Rule, mere execution of certain of another company's activities would not constitute ''control'' over that company. Rather, under the proposed definition of the term, to constitute control, one person must directly or indirectly exercise a controlling influence over the management or policies of another person. The Bureau notes that under the Proposal, the Bureau would evaluate for each company it reviews whether one person has a controlling interest over another, based on the particular facts and circumstances of the relationship.[24] If one company does in fact have a controlling influence over another's management or policies, the Bureau believes that it is appropriate to aggregate the annual receipts of the companies for purposes of assessing larger-participant status, and that this would not be unfair to a smaller company that is controlled by a larger one. Therefore the Bureau declines to amend the Proposal to delete the ''controlling influence'' test.

Commenters also argued that before determining that one person exercises a controlling influence over another, the Bureau should provide notice and an opportunity for a hearing. The Bureau recognizes that some other Federal statutes, such as the BHCA, provide for hearings in assessing whether one company has a controlling influence over another.[25] At the same time, a number of other Federal statutes and regulations that contain ''controlling influence'' provisions do not contain hearing provisions.[26] The Bureau believes that the need for a hearing, as under the BHCA, is not present here. Under the BHCA, the Board of Governors of the Federal Reserve System must approve the establishment of a bank holding company.[27] A person that controls a bank holding company is itself a bank holding company under the BHCA.[28] The activities of a bank holding company are highly regulated by the Board of Governors.[29] Thus, a finding of control under the BHCA has a much more significant consequence than a finding of control would have under the final rule. In the case of the final rule, the consequence of companies' being affiliated by means of a ''controlling influence'' is that their annual receipts would be aggregated for purposes of assessing whether they are larger participants of a covered market, and thus subject to supervision by the Bureau's supervisory authority.[30] The companies would not be subject to any new substantive conduct requirements as a result. As discussed below, being subject to supervision is not a consequence that necessitates a hearing, as a matter of due process, on the general question whether a company is a larger participant. A hearing is similarly not necessary on the predicate issue of whether two companies are affiliated. Therefore, the Bureau believes that a hearing provision is not warranted for the final rule and declines to add such a provision.

Several industry commenters argued that owning voting securities or similar interests should not constitute control until a person owns 50 percent, rather than 25 percent, of any class of voting securities or similar interest. One pointed out that if the threshold is only 25 percent, a given entity could be an ''affiliated company'' of several persons, if each such person owned just over 25 percent of a class of voting securities. The Bureau notes the 25 percent threshold test is used in a number of statutes and regulations to determine whether one person controls another in the context of financial institutions.[31] The Bureau believes that this widely used threshold is appropriate for the final rule. The Bureau is concerned that increasing the ownership threshold from 25 percent to 50 percent would mean that if one person owns 49 percent of a company, and three others separately owned the remaining 51 percent of that company, no person would be deemed to control that company, absent the presence of a ''controlling influence.'' The Bureau believes that raising the ownership threshold as requested would too easily

[24] If two companies might be considered affiliates due to a ''controlling influence,'' the Bureau might assert that their aggregated receipts placed them over the threshold for a relevant market. After issuing correspondence initiating supervisory activity, pursuant to § 1090.103 of the final rule, the Bureau would entertain arguments that the companies were not linked by a ''controlling influence,'' along with other arguments relating to larger-participant status. The Proposed Rule's use of the phrase ''as determined by the Bureau'' was not meant to suggest that the Bureau would make a prior determination with respect to ''controlling influence.'' The Bureau therefore omits that phrase from the definition of ''control'' in the final rule.

[25] 12 U.S.C. 1841.

[26] 12 CFR 41.3(i) (the OCC's definition of ''control'' under the FCRA); 12 CFR 717.3(i) (the National Credit Union Administration's (NCUA) definition of ''control'' under the FCRA); 12 CFR 1805.104(q) (Treasury Department's definition of ''control'' for purposes of the Community Development Financial Institutions Program); 12 CFR 336.3 (the FDIC's definition of ''control'' for purposes of post-employment restrictions on former FDIC examiners).

[27] 12 U.S.C. 1842.

[28] 12 U.S.C. 1841(a)(1).

[29] See, *e.g.,* 12 U.S.C. 1843 (restricting activities in which a bank holding company may engage).

[30] 12 U.S.C. 5514(b)(1).

[31] 12 U.S.C. 1841 (BHCA); 12 CFR 41.3(i) (the OCC's definition of ''control'' under the FCRA); 12 CFR 717.3(i) (the NCUA's definition of ''control'' under the FCRA); 12 CFR 1805.104(q) (Treasury Department's definition of ''control'' with respect to Community Development Financial Institutions Program); 12 CFR 336.3 (the FDIC's definition of ''control'' for purposes of post-employment restrictions on former FDIC examiners).

permit evasion of, or attempts to evade, the aggregation requirement. The Bureau therefore declines to increase the ownership threshold to 50 percent.

Finally, one commenter argued that when a company acquires another firm, the acquiring company cannot immediately exercise control over the target's operations. This commenter requested a grace period of 12 months after the acquisition, during which the target firm would not be considered an ''affiliated company'' for purposes of this rule. The Bureau believes that when one company acquires another, the acquiring company in fact controls the acquired company at the time of the transaction. This is true even if the acquiring company chooses to exercise that control by maintaining the status quo. The Bureau also notes that ''control'' is a concept used only to implement the aggregation requirement under 12 U.S.C. 5514(a)(3)(B) in connection with assessing whether a person is a larger participant of a market for consumer financial products or services. Even assuming the acquirer lacks effective control over the acquired company immediately after the acquisition, the annual receipts of the combined company are nonetheless an appropriate measure of the resulting company's market participation. Accordingly, the Bureau declines to amend the Proposed Rule to provide a 12-month grace period as requested.

For all of the foregoing reasons, the Bureau adopts the definition of ''affiliated company'' with minor technical amendments for consistency.

Assistant Director. The Proposed Rule stated that the term ''Assistant Director'' means the Bureau's Assistant Director for Nonbank Supervision or her or his designee. The Proposed Rule further stated that the Director of the Bureau may perform the functions of the Assistant Director as set forth in the Proposed Rule, and that, in the event there is no Assistant Director, the Director of the Bureau may designate an alternative Bureau employee to fulfill the duties of the Assistant Director. The Bureau received no substantive comments on this definition and adopts the definition as proposed, with minor technical amendments for consistency.

Bureau. The Proposed Rule stated that the term ''Bureau'' means the Bureau of Consumer Financial Protection. The Bureau received no substantive comments on this definition and adopts the definition as proposed, with minor technical amendments for consistency.

Completed fiscal year. The Proposed Rule stated that the term ''completed fiscal year'' meant any tax year including any short tax year. The Bureau did not receive any objections to the proposed definition. However, the Bureau believes that a calendar year, a 12-month period ending on December 31, could be an appropriate tax year for purposes of this Part. For this reason, and for clarification purposes, the final rule amends the Proposed Rule to define ''completed fiscal year'' as a tax year including any fiscal year, calendar year, or short tax year,[32] with other minor technical amendments for consistency.

Consumer. The Proposed Rule's definition of ''consumer'' is the same as that set forth in 12 U.S.C. 5481(4). The Proposed Rule provided that the term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual. The Bureau did not receive any substantive comments addressing the proposed definition and adopts the definition as proposed, with minor technical amendments for consistency.

Consumer financial product or service. The Proposed Rule incorporated the definition of the term ''consumer financial product or service'' set forth in 12 U.S.C. 5481(5). Thus, the Proposed Rule stated that the term ''consumer financial product or service'' means any financial product or service as defined in 12 U.S.C. 5481(15) that is described in one or more categories under: (a) 12 U.S.C. 5481(15)(A) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or (b) clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A)[33] and is delivered, offered, or provided in connection with a consumer financial product or service referred to in the immediately preceding subparagraph. The Bureau did not receive substantive comments on the definition of the term ''consumer financial product or service'' and adopts the definition as proposed, with minor technical amendments for consistency.

Dodd-Frank Act. The Proposed Rule stated that the term ''Act'' means the Consumer Financial Protection Act of 2010. The Bureau did not receive any substantive comments on the proposed definition. For purposes of consistency with other Bureau rulemakings, the final rule replaces the defined term ''Act'' with ''Dodd-Frank Act,'' and otherwise adopts the definition as proposed with minor technical amendments for consistency.

Larger participant. The Proposed Rule defined the term ''larger participant'' to mean a nonbank covered person that meets a test under Subpart B, and which remains a larger participant for the period provided in § 1090.102. The Bureau did not receive substantive comments on this definition and adopts the definition as proposed, with minor technical amendments for consistency.

Nonbank covered person. The scope of coverage of the Bureau's supervisory authority under 12 U.S.C. 5514 relates to ''covered persons,'' as defined in 12 U.S.C. 5481(6), that are neither insured depository institutions or credit unions, nor affiliates of those insured depository institutions or credit unions with assets of more than $10 billion, as set forth in 12 U.S.C. 5515(a) and 5516(a). Thus, the proposed definition excluded persons described in 12 U.S.C. 5515(a) and 5516(a) and provided that the term ''nonbank covered person'' means, except for persons described in those sections: (1) Any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person described in subparagraph (1) of this paragraph if such affiliate acts as a service provider to such person. The Bureau did not receive any substantive comments on the definition of ''nonbank covered person'' and adopts the definition as proposed, with minor technical amendments for consistency.

Person. The Proposed Rule incorporated the definition of ''person'' set forth in 12 U.S.C. 5481(19). The Proposed Rule thus stated that the term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity. The Bureau did not receive any substantive comments on the definition of ''person'' and adopts the definition as proposed, with minor technical amendments for consistency.

Supervision and supervisory activity. The Proposed Rule defined the terms ''supervision'' and ''supervisory activity'' to mean the Bureau's exercise,

[32] The final rule provides that a ''fiscal year'' is 12 consecutive months ending on the last day of any month except December 31. A ''calendar year'' is 12 consecutive months beginning on January 1 and ending on December 31. A ''tax year'' is an annual accounting period for keeping records and reporting income and expenses. An annual accounting period does not include a ''short tax year.'' A ''short tax year'' is a ''tax year'' of less than 12 months. IRS Publication 538, *available at http://www.irs.gov/publications/p538/ar02.html.*

[33] Under these clauses, the term ''financial product or service'' is generally defined to include, subject to certain exclusions: (1) Extending credit and servicing loans, 12 U.S.C. 5481(15)(A)(i); (2) providing real estate settlement services or performing appraisals of real estate or personal property, 12 U.S.C. 5481(15)(A)(iii); (3) collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, 12 U.S.C. 5481(15)(A)(ix); and (4) collecting debt related to any consumer financial product or service, 12 U.S.C. 5481(15)(A)(x).

or intended exercise, of supervisory authority, including by initiating or undertaking an examination, or requiring a report, of a nonbank covered person pursuant to 12 U.S.C. 5514. The Bureau did not receive any substantive comments suggesting changes to the definition of ''supervision'' and ''supervisory activity'' and adopts the definition as proposed, with minor technical amendments for consistency.

The Bureau did, however, receive several comments related to the scope and exercise of the Bureau's supervisory authority. One group representing industry participants requested further detail about what an examination or supervision report would entail. Supervision may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. While the specifics of an examination may vary by market and by firm, the following applies generally to the supervision process. Typically, Bureau officials begin an on-site examination by contacting the firm for an initial conference with management, and often by also requesting records and information. Based on these discussions and an initial review of the information received, examiners will determine the scope of an on-site examination, and then coordinate with the firm to initiate the on-site portion of the examination. While on-site, examiners will spend a period of time holding discussions with management about the company's processes and procedures; reviewing documents, records, and accounts for compliance; and evaluating the firm's compliance management systems. As with the Bureau's bank examinations, examinations of nonbanks will involve issuing confidential examination reports and compliance ratings.

The Bureau additionally notes that it has published a general examination manual describing the Bureau's supervisory approach and processes, as well as substantive legal areas subject to examination. This manual is available on the Bureau's Web site.[34] As explained in the examination manual, reports of examination will be structured to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. The Bureau intends to release examination procedures specific to consumer reporting prior to beginning examinations.

One consumer group commented that where the Bureau has supervisory authority over a larger participant by virtue of its participation in a particular market, the Bureau should examine all of the entity's activities related to consumer financial products or services, even those that pertain to markets in which the entity is not a larger participant. A commenter from the consumer reporting industry, on the other hand, asked the Bureau to make clear that it will exclude from its examination of a larger participant of a market areas of the company's operations outside that particular market.

The Dodd-Frank Act authorizes the Bureau to supervise ''covered person[s]'' described in 12 U.S.C. 5514(a)(1)(A) through (E). By granting the Bureau supervisory authority over such ''covered persons,'' as opposed to over particular activities in which they engage, the Dodd-Frank Act establishes that the Bureau's supervisory authority is not limited to the products or services that qualified a person for supervision, but also includes other activities of such a person that involve other consumer financial products or services or are subject to Federal consumer financial law.[35] This broad supervisory scope is consistent with the purposes that the Dodd-Frank Act sets out for the Bureau's supervisory activities. Specifically, the Dodd-Frank Act directs the Bureau to require reports and conduct examinations on a periodic basis of the ''persons'' described in 12 U.S.C. 5514(a)(1) for purposes of (a) assessing compliance with the requirements of Federal consumer financial law, (b) obtaining information about the activities and compliance systems or procedures of such persons, and (c) detecting and assessing risks to consumers and to markets for consumer financial products and services.[36] In many cases, these broad purposes could not be accomplished if the scope of the Bureau's examinations and report requests were limited to the particular products or services that qualified a person for the Bureau's supervision. For example, an entity's violation of a provision of the FCRA in connection with activities that fall outside the final rule's definition of consumer reporting would still be relevant to whether the entity has violated a Federal consumer financial law and to whether the entity may pose risks to consumers. Moreover, such a violation of the FCRA may indicate weaknesses in compliance systems and the potential for other violations and related consumer harms.

Accordingly, the Bureau concludes that if an entity is subject to the Bureau's supervisory authority, the Bureau may examine the entire entity for compliance with all Federal consumer financial law, assess enterprise-wide compliance systems and procedures, and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervision.

A commenter representing the consumer reporting industry urged the Bureau to publish examination manuals and procedures sufficiently far in advance of any examination or other supervision activity so that affected companies could incorporate such manuals and procedures into their procedures and training. As noted above, the Bureau has published its general examination manual as well as examination procedures for mortgage origination and servicing, and for short-term, small-dollar loans. The examination manual outlines legal requirements under the various laws applicable to the relevant products and services and guides examiners on information they should evaluate regarding compliance with those laws. Many of the laws addressed in the examination manual, including but not limited to the FCRA, are directly applicable to consumer reporting entities, and the Bureau intends to supplement the manual to include procedures specifically addressed to consumer reporting before beginning examinations. As noted in the discussion on the effective date above (Section IV(B)), however, market participants are required to be in compliance with applicable Federal consumer financial law, regardless of whether they are subject to supervision by the Bureau.

The Bureau received several comments regarding the supervision of service providers to larger participants. Neither the Proposed Rule nor the final rule addresses the scope or manner of the Bureau's supervisory authority over service providers to nonbanks pursuant to 12 U.S.C. 5514. The Proposal simply observed that the Dodd-Frank Act vests the Bureau with supervisory authority over service providers.[37] Consequently,

[34] Available at *http://www.consumerfinance.gov/guidance/supervision/manual/*.

[35] For specific references in the Dodd-Frank Act to supervision authority over ''persons'' rather than particular activities see, *e.g.,* 12 U.S.C. 5514(b)(1) (''The Bureau shall require reports and conduct examinations on a periodic basis of 'persons' described in subsection (a)(1) * * *.'') (emphasis added); 12 U.S.C. 5514(a)(1) (''[T]his section shall apply to any covered 'person' who * * *.'') (emphasis added).

[36] 12 U.S.C. 5514(b)(1).

[37] A service provider is a person that provides a material service to a covered person in connection

comments regarding which service providers the Bureau may supervise, and how, are not germane to the final rule.[38]

Section 1090.102—Status as Larger Participant Subject to Supervision

The Proposed Rule stated that a person qualifying as a larger participant shall not cease to be a larger participant under this Part until two years from the first day of the tax year in which the person last met the applicable threshold to be defined as a larger participant.[39] One industry commenter objected to supervision's continuing for a minimum of two years, even if the business immediately falls below the applicable threshold. The Bureau believes that it is important to have sufficient time to undertake and complete supervisory activities, including any necessary follow-up examinations relating to a larger participant, and that less than two years would not be adequate to achieve this goal. Moreover, the threshold is not a precise demarcation of what market participants are ''larger.'' For example, a firm with annual receipts falling below the threshold for the consumer reporting market may still be a relatively large participant of the market, especially if its annual receipts, calculated using the procedures specified in the final rule, were above the threshold within the previous two years. To conclude that such a firm should still be a larger participant within the Bureau's supervisory authority is consistent with setting the threshold at more than $7 million. Indeed, the two-year period is part of the Bureau's definition of ''larger participant,'' a fact the Bureau took into account in setting the threshold for the consumer reporting market at more than $7 million in annual receipts. Accordingly, the Bureau adopts § 1090.102, as proposed in § 1090.103 of the Proposed Rule, with minor technical amendments for consistency.

Section 1090.103—Assessing Status as a Larger Participant

The Bureau explained in the Proposal that it expects to use various data sources, including publicly available data, to identify which nonbank covered persons appear to qualify as larger participants. One commenter asked the Bureau to describe the nature of these ''various data sources.'' The Bureau intends to use any data sources that it determines are appropriate, which may include SEC filings, public shareholder information, industry surveys, or data obtained through proprietary sources. In some instances, if sufficient information is not available to the Bureau to assess a person's larger-participant status, the Bureau may, as discussed below, request information to facilitate such an assessment.

As explained in the Proposal, the Bureau recognizes that there may be instances when the Bureau seeks to supervise a person but that person disputes whether it is a larger participant. The Proposed Rule therefore sets forth a procedure for such a person to challenge its status as a larger participant by providing to the Assistant Director for Nonbank Supervision of the Bureau an affidavit setting forth an explanation of the basis for the person's assertion that it does not meet the definition of larger participant. The Proposed Rule further permitted a person to include with the response copies of any records, documents, or other information on which the person relied to make the assertion. The Proposed Rule also provided that a person waives the right to rely, in disputing whether it qualifies as a larger participant, on any argument, records, documents, or other information that it failed to submit to the Assistant Director under this section. Moreover, the Proposed Rule stated that a person that fails to respond to the Bureau's written communication within 30 days would be deemed to have acknowledged that it is a larger participant. Under the Proposed Rule, after reviewing the affidavit and any other information submitted by the person challenging its status as a larger participant or deemed relevant by the Assistant Director, the Assistant Director would send the person an electronic transmission explaining whether the person meets the definition of a larger participant. Additionally, the Proposed Rule stated that the Assistant Director may require that a person provide to the Bureau such records, documents, and information as the Assistant Director may deem appropriate for assisting assessments of entities' status as larger participants.[40]

These provisions were proposed pursuant to the Bureau's authority under 12 U.S.C. 5514(b)(7). Subparagraph (7)(A) authorizes the Bureau to ''prescribe rules to facilitate [its] supervision'' of, among other things, larger participants of the markets to be covered by regulations like the Proposed Rule. The ability to acquire information to support an assessment of whether a person meets the test for being a larger participant will serve that purpose.[41] In addition, subparagraph (7)(B) authorizes the Bureau to require persons described in 12 U.S.C. 5514(a)(1) to provide records to facilitate the Bureau's supervision. Section 1090.103 of the final rule was also proposed pursuant to 12 U.S.C. 5512(b)(1), which grants the Director of the Bureau the authority to prescribe such rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, such as the Bureau's supervision of larger participants, and to prevent evasions of such law. Providing a process whereby entities must come forward with information if they wish to challenge their status as larger participants, and providing the Bureau the ability to obtain information related to the status of persons as larger participants under the rule, is necessary and appropriate for the Bureau to implement and efficiently exercise its supervision authority and to prevent evasion of 12 U.S.C. 5514.

The Bureau received a number of comments on the proposed process for

with a consumer financial product or service. 12 U.S.C. 5481(26)(A). The Dodd-Frank Act provides a non-exhaustive set of examples of such material services. 12 U.S.C. 5481(26)(A).

[38] One commenter suggested that the Bureau publish a policy that it will not examine any service provider until after it has examined the entity receiving the services. The Bureau will consider this comment in the course of its supervision.

[39] For example, assume a nonbank consumer reporting entity's fiscal year ran from July 1 to June 30. Assume the entity had $8 million in receipts in each of the fiscal years of 2011, 2012, and 2013 (July 1, 2010 to June 30, 2011; July 1, 2011 to June 30, 2012; and July 1, 2012 to June 30, 2013, respectively). During the 2014 tax year, beginning on July 1, 2013, the three most recently completed fiscal years would be 2011, 2012, and 2013, with an average of $8 million in receipts. The entity would therefore be a larger participant during its 2014 tax year. Because that status lasts for two years, the entity would also be a larger participant during its 2015 tax year (from July 1, 2014 through June 30, 2015), even if its 2014 ''annual receipts'' were below $7 million. For example, suppose the entity had only $2 million in receipts for the completed 2014 fiscal year. The decreased receipts would first factor into the ''annual receipts'' calculation for 2015, when they would reduce the company's ''annual receipts'' to $6 million. But the company would still be a larger participant during that year, as a result of the above-threshold annual receipts calculated for the 2014 tax year.

[40] The Bureau believes that while it would have this authority under 12 U.S.C. 5514 even absent a regulation, a regulation is useful to provide clarity on the issue.

[41] 12 U.S.C. 5514(b)(7)(D) provides that in developing requirements or systems under that provision, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration) where appropriate. Given the focus of these provisions of the Proposal on obtaining particularized information relevant to larger-participant status, the Bureau does not believe that such consultation is necessary or appropriate in connection with this final rule. The Bureau, however, requested comments from relevant State agencies on the Proposal, and did receive comments from a couple of State regulatory agencies expressing their belief that a certain company providing information services relating to payday lending should be excluded from the rule's coverage.

allowing a person to submit to the Bureau documents and information supporting the person's assertion that it is not a larger participant. A representative of the consumer reporting industry suggested that the Bureau create a mechanism and procedures for appeal. Another commenter stated that the proposed method of challenging larger-participant status violates due process.

The Bureau believes that the proposed procedure is an appropriate method by which a person may provide documents, records or other information to the Bureau if it wishes to dispute whether it meets the larger-participant threshold for a market. Due process concerns, as put forward by commenters, do not mandate any particular procedures for the initiation of supervision,[42] because a decision to initiate supervision does not implicate an interest protected by the Fifth Amendment. Supervision alone does not impose any penalty on an entity, does not deprive it of any property, and does not restrict its ability to engage in a viable business. Moreover, even if a protected interest were at stake, the rule provides procedures that are comparable to those offered in numerous other situations that implicate protected interests.[43] The Bureau will provide notice of its intent to supervise an entity; receive written submissions, accompanied by evidence; and entertain entities' arguments that they do not qualify as larger participants. Due process does not necessitate a hearing in every instance, and the evidence involved in assessing a larger participant's annual receipts from consumer reporting is not of the kind that requires oral presentation.[44] The Bureau proposed to respond to entities' challenges to larger-participant status because the Bureau believed it would be useful to have an informal method for resolving whether a person is a larger participant. For all the above reasons, the Bureau does not believe additional procedures are necessary to comport with due process.

Other commenters suggested that the 30-day time period allowed to challenge larger-participant status and provide the documents relied on for the challenge was not sufficient. One commenter representing the consumer financial services industry stated that nonbanks identified as larger participants should be able to provide additional arguments, records, documents, or other information to the Assistant Director as needed, particularly since the initial 30-day period is a narrow window and there is no deadline for a decision by the Assistant Director. Another industry representative said that it believes that 30 days is a wholly inadequate time period for a business to identify all of the relevant information and to prepare its argument, especially because of the difficulty of apportioning receipts. Similarly, a commenter representing the consumer reporting industry suggested eliminating or significantly revising the provision whereby a person that fails to respond to the Bureau within 30 days will be deemed to acknowledge that it is a larger participant. This commenter also stated that an entity should be able to challenge its status as a larger participant at any time if it has a good-faith basis for doing so, and failure to respond in any manner to a notice from the Bureau should not constitute waiver of the opportunity to submit evidence.[45] Various industry commenters suggested that the final rule allow greater response times to challenge larger-participant assessments that ranged from 60 to 90 days, to an unlimited period.

The Bureau, however, believes that it is necessary to have a firm time limit for this dispute process. Eliminating the deadlines and permitting additional records, documents, or other information to be presented to the Bureau at any time would create unnecessary uncertainty and be administratively difficult to implement. A firm deadline for submission of records, documents, or other information, on the other hand, would permit the timely and orderly resolution of an assessment of larger-participant status. Holding firms to have waived the opportunity to offer information and arguments that they do not present during the specified timeframe is an appropriate mechanism for enforcing the deadline.

At the same time, the Bureau recognizes that entities may need time to collect and assemble relevant documentation regarding larger-participant status. The Proposed Rule included a provision under which the Assistant Director might modify the response time on her or his own initiative or at the request, based on a showing of good cause, of the person responding. The Bureau adopts in the final rule this provision for requesting an extension. In addition, the Bureau concludes that increasing the general time limit for response from the proposed 30 days to 45 days strikes an appropriate balance between providing a reasonable opportunity to challenge larger-participant status and not allowing so much time as to be disruptive to the supervisory program.

A representative of the consumer reporting industry suggested that the final rule should require that the Bureau have a reasonable basis to believe that a person is a larger participant before sending a written communication initiating supervisory activity. As the Bureau has explained above, the Bureau expects to use various data sources, including publicly available data, to identify which nonbank covered persons appear to qualify as larger participants. The Bureau intends to use the best available data to make assessments regarding a person's status as a larger participant. If needed, the Bureau will request relevant information to help assess whether a person is a larger participant. Thus, the Bureau will make an informed assessment of larger-participant status. The Bureau believes neither that the Dodd-Frank Act requires, nor that it would be appropriate or necessary, for the Bureau to set forth in the regulation a specific standard regarding larger-participant status that must be met before the Bureau can undertake supervisory activity. The Bureau therefore declines to amend the Proposal in the manner suggested by this commenter.

An industry commenter suggested that the dispute process could be an inefficient and costly exercise if there is no intent to supervise a person. The Bureau notes, however, that the response process only comes into play if the Bureau informs a person that it intends to undertake a supervisory activity in connection with that person, and if that person decides to dispute whether it is a larger participant.

The Bureau also received a comment suggesting that the final rule provide a way for a person to request and obtain from the Bureau an advance larger-participant determination. The Bureau believes that providing an assessment as to whether a person qualifies as a larger participant, absent any intent of the Bureau to initiate supervisory activities in connection with the person, would be unnecessary and burdensome to the Bureau. A market participant should be

[42] In addition, the Dodd-Frank Act does not mandate any mechanism like what the rule provides.

[43] *See, e.g., Karpova* v. *Snow,* 497 F.3d 262 (2d Cir. 2007); *FDIC* v. *Coushatta,* 930 F.2d 1122 (5th Cir. 1991).

[44] *See Mathews* v. *Eldridge,* 424 U.S. 319, 344–45 (1976).

[45] Waiver, under this provision of the Proposed Rule, would apply with respect to the particular year for which an entity's status as a larger participant was at issue. If an entity's annual receipts declined in later years, and the Bureau nevertheless initiated supervisory activity, provided it is outside of the two-year supervision period, the entity would have a chance to dispute whether it was a larger participant in those later years.

capable of evaluating whether its activities qualify it as a larger participant. Additionally, such a process would be burdensome to the Bureau because, in addition to making such assessments with respect to market participants it considered examining, the Bureau could also be placed in the position of responding to myriad requests from market participants it does not have near-term plans to supervise. For these reasons the Bureau declines to amend the Proposed Rule to provide for advance determinations as described.

Finally, the Bureau received comments from attorney and industry representatives expressing concern that nonbank covered persons will be obligated to provide attorney-client privileged information when challenging larger-participant status, or when the Bureau requires a person to provide information to support the Bureau's evaluation of entities' larger-participant status. But the Proposal did not require that any covered person provide privileged documents to the Bureau to support a challenge of larger-participant status. Of course, a person may choose to submit privileged documents in the course of such a challenge, although it is difficult to conceive of a need to submit privileged information to document an entity's representations as to its annual receipts. Pursuant to a rule recently adopted by the Bureau, such a submission would not result in a waiver of any applicable privilege as to third parties.[46] Similarly, while under § 1090.103(d) the Bureau may require the submission of documents, the Bureau does not presently anticipate that, absent unusual circumstances, it would request attorney-client privileged material under this provision. In any event, the Bureau's recently adopted rule regarding submissions of privileged information would apply to material provided in response to such a request.

For the reasons discussed above, the Bureau adopts § 1090.103, as proposed in § 1090.104 of the Proposed Rule, amended to increase the response period for disputing larger-participant status from 30 days to 45 days with additional minor technical amendments for consistency.

Subpart B—Markets

Section 1090.104—Consumer Reporting Market

As discussed in the Summary of the Final Rule, above, the consumer reporting market is of fundamental importance to markets for many other consumer financial products and services, affecting hundreds of millions of consumers. The market includes consumer reporting agencies selling comprehensive consumer reports, consumer report resellers, analyzers, and specialty consumer reporting agencies (collectively these market participants are referred to as consumer reporting entities).

Several commenters criticized the Bureau's decision to supervise larger participants of the proposed consumer reporting market. They contended that the Dodd-Frank Act requires the Bureau to consider four specific factors in issuing a rule under 12 U.S.C. 5514(a)(2): ''The asset size of the covered person,'' ''the volume of transactions involving consumer financial products or services in which the covered person engages,'' ''the risks to consumers created by the provision of such consumer financial products or services,'' and ''the extent to which such institutions are subject to oversight by State authorities for consumer protection.''[47] These commenters argued that a failure to consider these four factors would be arbitrary and capricious.

The Bureau believes that these commenters have misinterpreted the scope and purpose of 12 U.S.C. 5514(b)(2). That subsection describes how the Bureau must ''exercise its authority under paragraph [(b)](1),'' [48] which in turn authorizes the Bureau to supervise ''persons described in subsection (a)(1).'' The final rule does not exercise authority provided by subsection (b)(1). Rather, it ''describe[s],'' in part, a set of persons falling within subsection (a)(1), by defining a category of ''larger participant[s].'' In choosing which persons subject to that authority to supervise, the Bureau will consider the factors set forth in paragraph (b)(2). The Dodd-Frank Act does not mandate consideration of those factors before issuing the rule that establishes the category itself under paragraph (a)(1).[49]

The text of paragraph (b)(2) supports this interpretation. The factors to consider include ''the asset size of the covered person'' and the transaction volume of ''the covered person.'' These factors are relevant with respect to a particular person being considered for supervision. The reference to a single covered person suggests this provision does not apply to a rule, like the instant one, defining a category of many covered persons.

These commenters also asked the Bureau to explain why it is choosing consumer reporting as the subject of this rule, instead of some other market for a different consumer financial product or service. The Bureau has wide discretion in choosing markets in which to define larger participants. The Bureau need not conclude before issuing a rule defining larger participants of a given market that the market identified in the rule has a higher rate of non-compliance, poses a greater risk to consumers, or is in some other sense more important to supervise than other markets. Indeed, 12 U.S.C. 5514(b)(1), by recognizing that supervision's purposes include assessing compliance and risks posed to consumers, suggests that the Bureau need not determine the level of compliance and risk in a market before issuing a rule that renders larger participants of the market subject to supervision. Choosing consumer reporting as the subject of this rule is reasonable because consumer reporting, as defined in the rule, is an important activity that affects hundreds of millions of consumers and because supervision of larger participants of this market will be beneficial to consumers and markets and will further the Bureau's mission to ensure consumers' access to fair, transparent, and competitive markets for consumer financial products and services.

Section 1090.104 (a)—Market-Related Definitions

Annual receipts. The proposed definition of ''annual receipts'' was informed by the method of calculating ''annual receipts'' used by the SBA in determining whether a firm is a ''small business'' concern.[50] Under the proposed definition, for purposes of calculating ''annual receipts,'' the term ''receipts'' means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms. Under the Proposal, the term would not include net capital gains or losses. As proposed, annual receipts are measured as the average of a person's three most recently completed fiscal years, as appropriate, or over the entire period the person has been in business if that is less than three

[46] 77 FR 39617 (July 5, 2012), codified at 12 CFR Part 1070.

[47] 12 U.S.C. 5514(b)(2).

[48] 12 U.S.C. 5514(b)(2).

[49] The rule defining larger participants must be promulgated ''in accordance with paragraph (2),'' which means paragraph (a)(2), not paragraph (b)(2). Paragraph (a)(2) does not refer to the multiple considerations listed in paragraph (b)(2).

[50] 13 CFR 121.104.

completed fiscal years.[51] The proposed calculation of annual receipts would also implement the aggregation requirement in 12 U.S.C. 5514(a)(3)(B) by providing that the annual receipts of a person shall be added to the annual receipts of each of its affiliated companies. As proposed, such aggregation includes the receipts of both the acquired and acquiring companies in the case of an acquisition occurring during any relevant measurement period.

The Bureau received a number of comments relating to ''annual receipts.'' [52] Many commenters expressed concerns or raised objections to the use of annual receipts to measure participation in the consumer reporting market. One commenter asked whether the Bureau intends to bind itself to IRS guidance and related tax law and recommended that the Bureau provide examples of how different industry participants should calculate annual receipts under the final rule. The Bureau notes that to the extent IRS tax forms are utilized by a nonbank covered person to calculate receipts, which consist of ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold,'' the person should rely on IRS guidance. Additionally, the Bureau believes that there may be a variety of circumstances facing covered persons and the Bureau is not in a position to ascertain the most appropriate or useful examples to include in the final rule. Therefore, the Bureau declines to provide examples of how market participants should calculate annual receipts.

Several industry commenters argued that the definition of ''annual receipts'' counts part of a company's revenue twice, by including both total sales and cost of goods sold. These commenters suggested raising the threshold for qualifying as a larger participant of the consumer reporting market from more than $7 million to $14 million in annual receipts. Properly understood, the measurement of ''annual receipts'' does not involve double counting. In calculating total income, cost of goods sold is subtracted from various sources of income.[53] Thus, in calculating annual receipts, cost of goods sold is added back in to offset the original subtraction of the identical figure. The Bureau therefore declines to amend the definition of ''annual receipts'' based on this comment.

The Bureau received several comments on the appropriate measurement period for assessing larger-participant status (and thus when the supervision period begins). One consumer group suggested that to capture participants whose annual receipts are increasing, a person should be deemed a larger participant if the person had annual receipts meeting the applicable threshold either as an average of annual receipts over the last three fiscal years, or in the most recent fiscal year. Conversely, some commenters, believing the Proposal already specified that larger-participant status would be triggered by a single year's results, argued that businesses would forego growing in order to avoid accidentally coming within the Bureau's supervisory authority. One commenter suggested that an entity should qualify as a larger participant only if its receipts were above the threshold for three years in a row.

To clarify, under the rule ''annual receipts'' generally are not based solely on the receipts of a single year.[54] The Bureau agrees with those commenters who suggested that temporary fluctuations generally should not render an entity a larger participant. The proposed definition, by averaging a company's receipts over a three-year period, reduces the impact of sudden and potentially temporary fluctuations in receipts a company may experience—both decreases and increases. Thus the Bureau declines to include generally as larger participants persons who have receipts above the threshold in only the most recent fiscal year. For the reasons discussed above, the Bureau adopts the definition of annual receipts as proposed, with minor technical amendments, including a relocation of the definition into the section for consumer reporting market-specific definitions (Subpart B, § 1090.104(a)).

Consumer reporting. The final rule defines a market for ''consumer reporting,'' which is among the consumer financial products or services described in 12 U.S.C. 5481(15)(A)(ix) and (5)(B). Activities covered under these provisions of the Dodd-Frank Act include, subject to certain exceptions, ''collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service.'' [55] Under 12 U.S.C. 5481(5)(B), such activity is a ''consumer financial product or service'' when ''delivered, offered, or provided in connection with a consumer financial product or service.''

The final rule describes a market for products and services that fall within the category of consumer financial products and services described by these provisions of the Dodd-Frank Act. The final rule's definition of ''consumer reporting'' is not meant to track related provisions in the Dodd-Frank Act. The final rule has a different purpose: rather than describing the scope of a certain consumer financial product or service, it identifies a specific market for such a product or service. That market is not necessarily co-extensive with the statutory category into which the market activities fit. Indeed, the final rule excludes from ''consumer reporting'' the activities of persons that furnish information about their own, or their affiliates', experiences or transactions with consumers to consumer reporting entities and persons that use consumer report or other account information for their own purposes. Such activities may be within the ambit of the consumer financial products or services described in 12 U.S.C. 5481(15)(A)(ix) and (5)(B), but the Bureau does not regard them as part of the market covered by the final rule, for the reasons discussed in the paragraphs below.

The Proposal stated that the term ''consumer reporting'' means collecting, analyzing, maintaining, or providing consumer report information or other account information, used or expected to be used in any decision by another person regarding the offering or provision of any consumer financial product or service. The Bureau stated that the proposed definition would cover different types of consumer reporting entities such as credit bureaus, consumer report resellers, analyzers, and specialty consumer reporting agencies like those specializing in consumer check verification and reporting of payday lending transactions.[56] The proposed definition

[51] ''Completed fiscal year'' is a defined term under § 1090.101 of the final rule. A ''completed fiscal year'' means a ''tax year'' including any ''fiscal year,'' ''calendar year,'' or ''short tax year.'' A ''fiscal year'' is 12 consecutive months ending on the last day of any month except December 31. A ''calendar year'' is 12 consecutive months beginning on January 1 and ending on December 31. A ''tax year'' is an annual accounting period for keeping records and reporting income and expenses. An annual accounting period does not include a ''short tax year.'' A ''short tax year'' is a ''tax year'' of less than 12 months. IRS Publication 538, *available at http://www.irs.gov/publications/p538/ar02.html.*

[52] Comments relating solely to the debt collection market will be addressed in the final rule for that market.

[53] *See* IRS tax forms 1120 and 1120S.

[54] As noted in the Proposal, if an entity has not completed three fiscal years, its ''annual receipts'' will reflect the shorter period of its existence.

[55] 12 U.S.C. 5481(15)(A)(ix).

[56] This definition might also include entities such as credit scoring companies. Whether such an entity

also excluded several activities from the consumer reporting market. First, a person's providing information on its own transactions or experiences with consumers to its affiliates would not constitute consumer reporting. Second, a person's providing information on its own (or its affiliates') transactions or experiences to a consumer reporting entity would also be excluded. Third, the proposed definition incorporated the exclusion detailed in 12 U.S.C. 5481(15)(A)(ix) for information used solely in a decision regarding employment, government licensing, or residential leasing.

The final rule adopts the proposed definition of ''consumer reporting'' with several modifications. The final rule prescribes a broader exclusion for providing a company's information on its own transactions and experiences with consumers; the Bureau will not treat a company's provision of such information to any other person to be ''consumer reporting.'' The final rule also adds an exclusion for information that amounts to an authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device.

The Bureau received many comments on the definition of the term ''consumer reporting.'' One category of comments focused on the relationship between the consumer reporting activities covered by the Proposed Rule and those subject to the FCRA. First, a number of commenters criticized the definition for departing from the definitions of ''consumer report'' and ''consumer reporting agency'' in the FCRA.[57] Several of these commenters suggested that the difference between the Proposed Rule and the FCRA would cause uncertainty and confusion. They argued that some persons that do not consider themselves to be in the consumer reporting market would, unknowingly, nevertheless be subject to Bureau supervision. Other persons, the commenters contended, would erroneously believe they were subject to supervision and would waste effort preparing for examinations.[58]

The Bureau did not intend the Proposal's definition of ''consumer reporting'' to mirror the scope of the FCRA's definitions of ''consumer report'' and ''consumer reporting agency.'' [59] In some respects the proposed definition of ''consumer reporting'' was narrower than these FCRA definitions because it excluded information to be used solely in a decision for employment, government licensing, or residential leasing or tenancy. In other respects the proposed definition may have been somewhat broader than the coverage of the FCRA. For example, ''consumer report information, or other account information,'' for purposes of the Proposed Rule, could include information beyond what would be considered a ''consumer report'' under the FCRA. Similarly, certain entities that are not ''consumer reporting agencies'' within the meaning of the FCRA—such as certain analyzers of consumer report information—may be larger participants of the consumer reporting market delineated by the final rule. The Bureau's rule and the FCRA serve two different purposes. The FCRA is a substantive consumer protection statute that governs the activities of consumer reporting agencies (and other persons that furnish information to or receive information from such agencies). The rule, by contrast, defines larger participants of a market for consumer reporting for purposes of initially delineating the scope of coverage of the Bureau's supervision authority.

The Bureau's supervisory activities will extend beyond assessing consumer reporting agencies' compliance with the FCRA. The Bureau will also assess compliance with other Federal consumer financial law, and compliance with such law by persons other than those that the FCRA defines as consumer reporting agencies. Moreover, the Bureau's supervisory activities will seek to obtain information regarding activities and compliance systems and procedures of supervised persons and to detect and assess risks to consumers and markets for consumer financial products or services.[60] The Bureau emphasizes that the proposed definition of ''consumer reporting'' is relevant only to the final rule and has no applicability to the scope, coverage, definitions, or any other provisions of the FCRA or any other law or regulation. Therefore, the Bureau declines to conform the proposed definition of ''consumer reporting'' to the FCRA's definitions of ''consumer report'' and ''consumer reporting agencies.''

Second, several commenters pointed to what they said was a particularly important departure from the FCRA. According to these commenters, the proposed definition of ''consumer reporting'' covered circumstances in which a person does not provide information to a third party, for the third party's use in connection with a decision regarding the offering or provision of a consumer financial product or service. As an initial matter, it should be noted in this context that the final rule excludes a person's provision for any purpose of information about its own transactions or experiences with consumers. Moreover, under the proposed definition, the consumer reporting market covered collecting, analyzing, maintaining, or providing consumer report or other account information for its use or expected use ''by another person'' in a decision regarding the offering or provision of a consumer

is covered under this definition would depend upon its particular activities. To the extent that a credit scoring company is engaged in collecting, analyzing, maintaining, or providing consumer report or other account information for the purposes described above, it would be covered by the proposed definition. Several consumer groups suggested that the Bureau should explicitly state in the text of the regulation that credit scoring providers or developers are service providers. Assessing whether a particular entity is a service provider to a larger participant under the Dodd-Frank Act requires an evaluation of the person's activities. The Bureau declines to identify specific activities that might make a person a service provider to a larger participant, or to provide an exhaustive list of such activities.

[57] The FCRA defines ''consumer report'' as ''any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—(A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under [the FCRA].'' 15 U.S.C. 1681a(d)(1). There are several statutory exclusions, including one for reports of information relating solely to transactions or experiences between the consumer and the person making the report. 15 U.S.C. 1681a(d)(2). The definition of ''consumer reporting agency'' covers any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating information on consumers for the purpose of furnishing consumer reports to third parties. 15 U.S.C. 1681a(f).

[58] The Bureau received several comments asserting that specific activities that the commenters described, or in a few cases specific companies, were not within the market described by the rule. For example, one commenter suggested that providing a credit report on the owner of a small business to support a lender's decision whether to extend credit to the business should not be within the scope of the consumer reporting market. The Bureau does not believe it is appropriate to address whether each activity or firm mentioned by a commenter would be covered by the final rule. Whether specific activities fall within the definition of ''consumer reporting'' will be assessed by the Bureau when considering whether to initiate supervisory activities relating to a given company.

[59] The Bureau also does not believe that it is necessary to define the term ''consumer reporting agency'' in the regulation, as one commenter requested. A person may look to the definition of ''consumer reporting'' to determine whether it engages in activities that may qualify it as a larger participant of that market. The Bureau refers to the various participants of the market, including credit bureaus, resellers, analyzers, and specialty consumer reporting agencies, collectively as consumer reporting entities.

[60] 12 U.S.C. 5514(b)(1).

financial product or service. Thus, the person using or expected to use the information must be different from the market participant collecting, analyzing, maintaining, or providing the information. It bears emphasizing, however, that the person using or expected to use the information in a decision regarding a consumer financial product or service need not be a market participant's immediate customer. For example, resellers generally assemble and merge information contained in the databases of other consumer reporting agencies, and then provide reports including that information to third parties such as creditors that use the information to make a credit decision. Providing consumer report information to a reseller is included in the market, even though the reseller itself may not make decisions regarding the offering or provision of consumer financial products or services.

Third, commenters also suggested dividing the consumer reporting market identified by the Proposal into submarkets. One commenter suggested, for example, defining a separate market to cover consumer reporting entities over which the Bureau wishes to exercise supervisory authority but that are not consumer reporting agencies under the FCRA. Another proposed having two markets, demarcated by a distinction that, the commenter said, the FCRA makes between national credit repositories and consumer report resellers.

The Bureau believes that resellers, national credit repositories, specialty consumer reporting agencies, analyzers, and others engaged in consumer reporting activities as defined in the final rule are properly included in a single market. These different types of firms all participate in the process of preparing consumer financial information for use in decisions regarding consumer financial products or services. Moreover, many of the same legal requirements cover repositories, resellers, and specialty consumer reporting agencies. To the extent that the activities of larger participants of the consumer reporting market differ, the Bureau can adjust the scope and focus of its supervision activities accordingly. Therefore, the Bureau declines to revise the definition of consumer reporting to establish separate markets for consumer report resellers, the national repositories, and others engaged in consumer reporting activities.

Another category of comments asked the Bureau to alter the scope of the proposed exclusions from the consumer reporting market. First, the Bureau received comments both in favor of expanding the exclusion for furnishing information and in favor of deleting that exclusion.

Commenters opposing the exclusion expressed the view that the Bureau must ensure that it supervises major furnishers of information to consumer reporting entities, in addition to such entities as depositories and payday lenders that are otherwise subject to the Bureau's supervisory authority. The Bureau believes that companies' supplying information to consumer reporting entities on their own, or their affiliate's, transactions or experiences with consumers was properly excluded from the Proposed Rule. Furnishing information of that type is typically incidental to the furnisher's primary business, and an enormously wide variety of businesses furnish such information to consumer reporting entities. Therefore, including such activity in the definition of ''consumer reporting'' could have the unintended consequence of delineating such a broad consumer reporting market that it would encompass, for example, many types of consumer creditors. Because furnishing a company's own transaction and experience data is fundamentally different from the activities defined by the rule as consumer reporting, the Bureau does not believe such furnishing should be included in the same market for purposes of implementing the nonbank supervision program for consumer reporting entities.[61]

Other commenters suggested broadening in various ways the exclusion for furnishing information. One commenter asked the Bureau to clarify that agents and contractors that transmit information about a company's transactions or experiences with consumers on that company's behalf do not thereby become participants of the consumer reporting market. It is the Bureau's view that such agents or contractors would not be participating in the consumer reporting market merely by providing technical or operational support services to facilitate a person's furnishing of its own transaction and experience information to a consumer reporting entity.[62]

Another commenter provided the example of a depository institution that provides information about a consumer's account balances to a mortgage lender deciding whether to extend a loan to the consumer. Because the Proposed Rule excluded only an entity's provision of its transaction or experience information to its affiliates or to consumer reporting entities, this commenter believed the provision of information in its hypothetical example would fall within the scope of consumer reporting activities. The Bureau agrees that an entity's providing its own transaction or experience information in this context should not be treated as a consumer reporting activity. Accordingly, the Bureau is adopting, in the final rule, a simpler, broader exclusion. The final rule excludes a person's collecting, maintaining, analyzing, or providing its own transaction or experience information for use or expected use by another person in a decision regarding a consumer financial product or service. Such activity is excluded from the consumer reporting market defined by the rule, regardless of what person receives the information.

A commenter also suggested excluding from the final rule providing information to process a transaction requested by a consumer, a possible activity of payment systems that process account transactions. The Bureau agrees that such payment system activities should be excluded from the final rule and amends the final rule by excluding any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.[63]

Another commenter stated that companies that provide information outside the scope of the FCRA, but for use by third parties in decisions regarding the offering or provision of

[61] The Bureau also noted in the Proposal that many large furnishers of information to consumer reporting entities are already subject to the Bureau's supervisory authority under the Dodd-Frank Act, and future larger participant rules may bring additional furnishers of information under the Bureau's supervisory authority. As noted above, 12 U.S.C. 5514 grants the Bureau authority to supervise, regardless of size, nonbank covered persons that offer or provide to consumers: (1) Origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans. Additionally, the Bureau has the authority to supervise nonbank covered persons it has a reasonable cause to believe pose risks to consumers, after providing notice and a reasonable opportunity to respond. 12 U.S.C. 5514(a)(1)(C). Thus to the extent a significant nonbank covered person engaged in furnishing not otherwise covered is posing risks to consumers, the Bureau could exercise supervisory authority over the person on some other basis. Furthermore, under 12 U.S.C. 5515, the Bureau has the authority to supervise other furnishers such as very large banks, thrifts, and credit unions, and their affiliates.

[62] Because the Bureau is adding a broad exclusion permitting a person to provide its own transaction and experience information with other persons to the final rule, the exclusion for furnishing information to a consumer reporting entity has been amended to address only the activity of a person providing transaction and experience information of an affiliate to a consumer reporting entity.

[63] A similar exclusion is also included in the FCRA. 15 U.S.C. 1681a(d)(2)(B) (exclusion from the definition of ''consumer report'').

consumer financial products or services, do not operate in a market that could reasonably be considered a ''consumer reporting market.'' This commenter specifically referenced what it described as Gramm-Leach-Bliley Act (GLBA)-covered products, including consumer identification authentication, or fraud detection and identity theft protection, over which the commenter asserted the Bureau has no jurisdiction, as a result of 12 U.S.C. 5481(15)(B)(i). However, the cited provision says expressly that it applies ''[f]or purposes of (A)(xi)(II),'' and it does not purport to affect whether an activity constitutes a consumer financial product or service under any provision other than (A)(xi). For this and other reasons, the provision in question is not pertinent to this rulemaking. The Bureau therefore declines to alter the definition of ''consumer reporting'' in the way this commenter suggested.[64]

Another commenter asserted that the proposed definition of ''consumer reporting'' included too broad a scope of ''analytical services.'' The commenter suggested either excluding all analytical services or, at a minimum, providing other more limited exclusions for certain types of such services. The commenter also argued that analytical services should be excluded because the activity has a low risk of harm to consumers.

Analyzing consumer report information is an important activity in the consumer reporting market, and, as with collecting, maintaining, and providing information, can be an important factor in decisions regarding the offering or provision of consumer financial products or services. Additionally, the Bureau is aware of some entities that engage in reporting of consumer information and also analyze that information, deriving receipts from that analysis. Just as businesses extending credit rely on the collecting, maintaining, or providing of consumer report information, some also purchase analyses of the underlying consumer report information. Analyzing activity generally is done for compensation and may result in annual receipts for the entity providing analytical services, and a company that meets the threshold on the basis of its analyzing activities will likely affect many consumers. For these reasons, the Bureau declines to exclude analyzing consumer information in general from the consumer reporting market.[65]

The commenter also suggested that if analytical services are not generally excluded, the Bureau should exclude analytical services rendered for a particular consumer financial services provider using that provider's own information. The commenter argued that such services could be supervised in the context of examinations of the financial service provider itself, and that the Bureau's supervision program should not be duplicative by covering providers of such analytical services as ''larger participants.'' The commenter additionally suggested excluding analytical services other than certain modeling services,[66] arguing that the Bureau should focus its resources elsewhere.

The Bureau clarifies that the consumer reporting market delineated in the final rule does not include the activity of providing analytical services regarding another person's own information to that other person, where such analysis is used solely by that other person and is not provided to a third party (other than the other person's affiliated companies). Such activity is not treated differently, in the final rule, from a person's conducting its own analysis for its own use. A person's analyzing its own consumer report or other account information, without the expectation that the information will be used in connection with a decision ''by another person,'' is not included in the defined consumer reporting market. It is the Bureau's view that agents or contractors who analyze a person's data on that person's behalf, solely for that person's use, are similarly not analyzing consumer report or other account information for use ''by another person.''

The Bureau also received comments from consumer groups and consumers arguing that the market for consumer reporting should include background screening for employment purposes. The Bureau notes that the proposed definition of ''consumer reporting'' excluded collecting, analyzing, maintaining, or providing consumer report or other information to the extent that the information is used solely in a decision regarding employment, government licensing, or residential leasing, because these are explicit exclusions under 12 U.S.C. 5481(15)(A)(ix). Accordingly, the Bureau declines to amend the Proposal to include the activity of employment background screening in the final rule's definition of ''consumer reporting.'' [67]

For the reasons stated above, the Bureau adopts the Proposal's definition of ''consumer reporting,'' amended as described above and with minor technical amendments for consistency.

Section 1090.104(b)—Test To Define Larger Participants

Criteria. As noted in the Proposal, the Bureau has broad discretion in choosing criteria for measuring whether a nonbank entity is a larger participant of any given market. In issuing the Proposal, the Bureau considered several criteria for measuring participants of the consumer reporting market. These included, among others, annual receipts; number of unique consumer reports sold or otherwise provided to a third party annually; number of individual consumers a nonbank covered person collects, analyzes, and maintains data about, or provides consumer reports on, annually; and number of employees.

The Bureau proposed to use annual receipts as the measure of participation in the consumer reporting market. As explained in the Proposal, the Bureau believes that annual receipts resulting from consumer reporting activities is a reasonable indication of a person's level of market participation and impact on consumers. Consumer reporting entities earn income from selling consumer reports and from other market-related activities that directly affect consumers. As a result, the greater the annual receipts of a consumer reporting entity, the greater its market participation and the greater its impact on consumers.

In addition, as set forth in the Proposal, the proposed definition of

[64] Should appropriate circumstances arise, the Bureau will consider whether the activities the commenter describes fit within the rule's definition of consumer reporting.

[65] Moreover, as to the assertion that analyzers pose low risk to consumers, the Bureau notes that, as discussed in the Summary of Final Rule (Section III), above, the market for consumer reporting identified by the rule, which includes analyzers of consumer report information, is a significant market that affects hundreds of millions of consumers. The extent to which specific activities within that market may pose greater or lower risks to consumers does not determine whether to include the activities within the market; risk posed by a particular larger participant within the market for consumer reporting will be considered pursuant to 12 U.S.C. 5514(b)(2), in the course of the Bureau's exercise of its supervisory authority.

[66] Modeling in the consumer reporting market often consists of licensing a statistical algorithm to other participants of the consumer reporting market. These statistical systems or tools that establish numerical values or categorizations can be used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors. These algorithms produce figures commonly known as ''credit scores,'' ''risk predictors,'' or ''risk scores.'' *See* 15 U.S.C. 1681g(f)(2)(A).

[67] As indicated above, the Bureau may supervise a larger participant's provision of consumer report information for employment screening, even though such activity does not count in the calculation of annual receipts that determines larger-participant status.

''annual receipts'' is adapted from the existing measure used by the SBA. Because the SBA uses a similar measure in its small business loan programs,[68] the proposed test is expected to be sufficiently straightforward so as not to put undue burden on nonbank covered persons in determining whether they are subject to the Bureau's nonbank supervision program. However, it bears noting that the Bureau's definition of ''annual receipts'' differs from the SBA's in important respects. For example, as discussed below, the Bureau's rule counts only receipts resulting from activities in the identified consumer reporting market; the SBA, by contrast, counts all receipts of entities engaged in certain consumer reporting activities. This difference excludes some receipts from the amount being counted toward the threshold that marks a larger participant.[69]

As further explained in the Proposal, the Bureau analyzed data from the 2007 Economic Census on annual receipts for businesses in North American Industry Classification System (NAICS) code 561450 (credit bureaus). One commenter noted that analyzers may not all be included in this NAICS code. The Bureau acknowledges that the Economic Census data have certain limitations and do not perfectly reflect the set of participants of the market defined by this rule. First, the Proposed Rule's definition of ''consumer reporting'' does not correspond precisely to the NAICS code, which encompasses both ''consumer credit reporting agencies'' and ''mercantile reporting agencies,'' [70] but may not include other participants covered by the final rule's definition of consumer reporting. Second, entities in NAICS code 561450 may report to the Census revenues that are not included in annual receipts resulting from consumer reporting as defined in the rule. Third, entities that fall within the NAICS code may not correctly identify themselves or may otherwise fail to respond to the Census. The Economic Census data are likely therefore both over- and under-inclusive. An additional limitation of the Economic Census data for these codes is that the Census keeps aggregated annual receipts data confidential in certain tiers.[71] Notwithstanding these limitations, the data reveal the general distribution of the size of participants of the consumer reporting market described in the final rule. In the Proposal, the Bureau invited commenters to provide additional data sources. None relevant to the consumer reporting market were identified.[72]

Commenters suggested a variety of alternative criteria such as the total number of unique consumer reports sold, the number of individual consumers on which an entity provides consumer reports, the number of complaints about an entity, an entity's relative market share, or the annual receipts of an entity in a given geographic or demographic segment. The Bureau has broad discretion in choosing criteria to define larger participants of a given market, and does not believe these criteria are superior alternatives. The available data do not permit the Bureau meaningfully to measure the general contours of the market based on these criteria and thus to devise a test for defining larger participants of the consumer reporting market on the basis of them or to apply the test efficiently. Further, as set forth in the Proposal, the Bureau believes that the number of employees is not a suitable alternative criterion because it could be difficult for a multi-line company to apportion employee time between market-related and other activities, and many responsibilities may be fulfilled by contractors rather than employees.

Several commenters in or representing the consumer report reseller industry asserted that using annual receipts would result in double counting of cost of goods sold and thus result in the rule's covering much smaller businesses than intended. As discussed in connection with the definition of ''annual receipts'' above, the cost of goods sold is not double counted.

For the reasons set forth above, the Bureau declines to amend the Proposed Rule to change the criterion used in the larger-participant test for the consumer reporting market and adopts the use of annual receipts as proposed.

Threshold. As noted in the Proposal, the Bureau has broad discretion in setting the threshold above which a nonbank covered person will qualify as a larger participant of the consumer reporting market. The Bureau proposed more than $7 million in annual receipts as the threshold to define larger participants of the consumer reporting market and adopts this threshold in the final rule for the following reasons.

Available data indicate that a threshold of $7 million in annual receipts from consumer reporting activities will enable the Bureau to cover in its nonbank supervision program the largest consumer reporting repositories as well as a range of other larger consumer reporting entities that play an important role in the consumer financial marketplace. Coverage likely will include a number of larger specialty consumer reporting agencies, resellers, and analyzers. The Bureau believes that this threshold will cover a sufficient number of market participants to enable the Bureau effectively to assess

[68] Information concerning the SBA's loan programs is available at: *http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/sba-loan-programs.*

[69] As another example, the Bureau's definition of control, which establishes an affiliation between companies such that their receipts are aggregated during the calculation of ''annual receipts,'' is broader than the SBA's definition of control.

[70] For the purposes of the Economic Census, mercantile reporting agencies are ''primarily engaged in compiling information on business firms, such as credit histories, and providing the information to financial institutions and others who have a need to evaluate the credit worthiness of those businesses.'' Consumer reporting agencies are ''primarily engaged in compiling information on individuals, such as credit and employment histories, and providing the information to financial institutions, retailers, and others who have a need to evaluate the credit worthiness of those persons.'' *http://www.census.gov/epcd/ec97/def/5614502.HTM* and *http://www.census.gov/epcd/ec97/def/5614501.HTM.*

[71] *Available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 561450. Many Census tiers have flags in the receipts category, which read ''withheld'' to avoid disclosing data for individual companies; data are included in higher-level totals. Other aggregated revenue data are available in a table showing the concentration of revenues among the largest firms, which extend through the top 50.

[72] In the Proposal, the Bureau made estimates based on data available from the 2007 Economic Census for NAICS code 561450. Since issuing the Proposal, the Bureau has learned of additional detailed Economic Census data for NAICS code 5614501, which encompasses ''consumer credit reporting agencies'' but not ''mercantile reporting agencies,'' in contrast to code 561450. These additional data have permitted the Bureau to refine its original estimates. First, the Bureau originally concluded that the consumer reporting market includes about 401 entities. This estimate was based on summary data for NAICS code 561450. The more detailed data permit the Bureau to refine its estimate to 410 consumer reporting entities. Second, the summary data for NAICS code 561450 informed the Bureau that about 75 percent of establishments in the code, over all sizes of firms, were consumer reporting entities. The more detailed data for NAICS code 5614501 reveal that the 75 percent figure is fairly consistent throughout the distribution of firm sizes. Third, the more detailed data for NAICS code 5614501 permit a closer estimate of the number of firms with receipts between the threshold and $10 million. This estimate does not change the Bureau's basic conclusions about how many firms are larger participants given the $7 million threshold; what fraction of the market they constitute; and what proportion of total receipts in the market they represent. The discussion of the threshold, below, will be based on the more refined data from NAICS code 5614501. The Bureau also received one comment suggesting that the Bureau use the Nationwide Mortgage Licensing System as a data source. However this source does not yet include data on the consumer reporting market. Another commenter suggested using a database maintained by the Federal National Mortgage Association. But that database only includes the names of a small set of reporting entities, and does not provide any other data.

compliance and identify and assess risks to consumers, but at the same time cover only entities that can reasonably be considered ''larger'' participants of the market.

As explained in the Proposal, while there are hundreds of consumer reporting entities, according to the 2007 Economic Census, a threshold of more than $7 million in annual receipts will cover approximately 30 consumer reporting entities, or 7 percent of market participants. The Bureau continues to estimate that a threshold of more than $7 million will cover approximately 30 out of 410 consumer reporting agencies,[73] which collectively generate 94 percent of industry receipts among consumer reporting agencies.[74] However, some of those consumer reporting entities may be specialty consumer reporting agencies providing, for example, consumer reports only for employment background screening or rental decisions. As noted above, such entities do not come within the market as defined by the final rule. For comparison, the Bureau estimates that the median value of annual receipts in this industry is less than $500,000, significantly below the proposed threshold.[75] Thus, the rule plainly brings within the scope of Bureau supervision only consumer reporting entities that can reasonably be described as larger participants of the consumer reporting market.

As explained in the Proposal, the threshold of more than $7 million in annual receipts is consistent with the objective of supervising market participants that have a significant impact on consumers, in terms of the number of consumers affected by their operations. In the consumer reporting industry, prices range from two to three cents for prescreening products, from seven cents to sixty two cents for credit scores, and from one to two dollars for consumer reports, while some specialty reports may cost several dollars.[76] Thus, a company with more than $7 million in annual receipts likely impacts several million consumers. Further, as stated above, the entities meeting the proposed threshold generate approximately 94 percent of industry receipts. The Bureau believes that this level of coverage is appropriate in light of the highly concentrated nature of the consumer reporting market and the different types of firms encompassed in the market. For example, based on the more granular Economic Census data recently made available, the Bureau estimates that the six largest consumer reporting entities account for 85 percent of industry receipts. The Bureau believes that there are firms in addition to the largest six entities that have such a high level of participation in the market that they are reasonably deemed larger participants, and thus covering a substantial portion of the annual receipts in this market is warranted.

The Bureau received comments from some consumer groups arguing that the threshold for qualifying as a larger participant of the consumer reporting market should be lowered. Other consumer group commenters suggested that the threshold should be revised to include any firm that has annual receipts of $7 million or more from any source, provided that at least $3.5 million are from consumer reporting—which would effectively lower the threshold for multi-line businesses. For the reasons discussed above, the Bureau believes that a threshold of $7 million in annual receipts from consumer reporting activities serves the purposes and objectives of the larger-participant supervision program. Accordingly, the Bureau declines to alter the threshold for the consumer reporting market in either manner suggested by these commenters.

As discussed in connection with the definition of ''annual receipts,'' other commenters suggested raising the threshold from more than $7 million to more than $14 million in annual receipts. The Bureau does not believe that setting the threshold higher than that proposed would result in sufficient coverage of the participants of the consumer reporting market. Defining the larger participants of the consumer reporting market as including more than just the largest firms serves the purposes and objectives of the Dodd-Frank Act. Some consumers may not have files at the largest consumer reporting agencies. Many consumers may not utilize a credit card or checking account, or otherwise participate in mainstream financial activities. As a result, the largest consumer reporting agencies may receive little, if any, data with which to maintain files on these consumers. However, these consumers may utilize alternative financial products such as payday loans or check cashing services, which in some instances may be reported to specialty consumer reporting agencies. Likewise, resellers may have a large impact on consumers in certain credit markets, such as the mortgage market.[77] Setting the threshold too high would make it less likely that the larger resellers and larger specialty consumer reporting entities that compile information about consumers in alternative financial markets would be subject to supervision.

Some commenters argued that the proposed threshold would cover firms with a relatively small amount of earnings. Implicitly, these commenters take issue with the use of annual receipts as a criterion and would prefer earnings as an alternative criterion. As discussed above, the Bureau believes annual receipts reasonably measure market participation and has not identified a superior alternative criterion for measuring such participation. Other commenters pointed out that the $7 million threshold would capture a relatively high percentage of firms in various market segments. The Bureau recognizes that the particular threshold of more than $7 million may capture more or fewer firms in specific market segments

[73] As noted above, the Bureau now has access to more detailed data relating solely to consumer reporting entities than it did when it published the Proposal. The more detailed supplemental data confirm the Bureau's original estimates; the Bureau relies on these data for the sake of improved accuracy. The Census data indicate there are 410 consumer reporting businesses in NAICS code 5614501. This figure is quite close to the number (401) estimated in the Proposal based on data for NAICS code 561450. The Bureau still regards 410 as only an estimate for the number of firms in the consumer reporting market, because, as discussed above, some firms may not report their activities properly and some firms (such as certain analyzers) may not fall within this NAICS code.

[74] *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 5614501. This calculation assumes that the 14 firms in the Census-defined tier between $5 million and $10 million are evenly distributed throughout the tier. Because of uncertainty over the distribution within this tier, the Bureau acknowledges that its estimate of 30 consumer reporting agencies is only approximate, and that between 21 and 35 consumer reporting agencies may meet the threshold based on Census data. The Bureau based the 94 percent calculation on the amount of annual receipts generated by the 30 largest consumer reporting agencies. The 20 largest consumer reporting agencies generate 92 percent of annual receipts in the industry. The Bureau estimates that the next 10 largest firms generate about 2 percent of annual receipts in the industry, for a total of 94 percent.

[75] The median is estimated from data *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 5614501.

[76] As noted in the Proposal, the Bureau produced these estimates by analyzing General Services Administration schedules and other publicly available price quotes from several consumer reporting firms. The Bureau acknowledges that in some instances consumer reports may cost more.

[77] In the mortgage market, originators routinely purchase ''three-merged'' and other credit reports sold by resellers, in order to facilitate their credit decisions. For example, the Federal Home Loan Mortgage Corporation, a government-sponsored entity that securitizes mortgages, has a Loan Prospector service that aids mortgage credit decisions. Loan Prospector, in turn, draws on a large network of resellers to provide originators these types of credit reports. *See http://www.loanprospector.com/about/features/mergedcreditoptions.html.*

within the consumer reporting market. Any threshold that operates market-wide will inevitably draw in more firms in some market segments than in others. Given the range of consumer reporting entities in the consumer reporting market identified by the final rule, the Bureau does not think it is practical to prescribe differing thresholds for more narrowly defined segments of the market. Doing so would effectively segregate the consumer reporting market covered by the final rule, which, for the reasons described above, the Bureau has determined would be inappropriate.

One commenter, referring to the Bureau's supervisory authority, pursuant to 12 U.S.C. 5515, over ''very large'' depository institutions and credit unions, *i.e.,* those with over $10 billion in assets and their affiliates, argued that the Bureau correspondingly should supervise only very large nonbank entities. But the Dodd-Frank Act's division of supervisory authority for insured depository institutions and credit unions does not govern the supervision of nonbank entities. Unlike depository institutions and credit unions that are not subject to Bureau supervision under 12 U.S.C. 5515, nonbanks in the consumer reporting market that are not subject to supervision under 12 U.S.C. 5514 generally will not be subject to other Federal supervision for assessing compliance with Federal consumer financial law or for other purposes. Moreover, 12 U.S.C. 5514 authorizes the Bureau to supervise entities that are ''larger'' participants in a market, not merely ''very large'' participants. Accordingly, the Bureau declines to raise the proposed annual receipts threshold for the consumer reporting market in response to this comment.

The Bureau also received a comment asserting that the proposed threshold would not acknowledge the existence of a middle market in consumer reporting. A pre-existing SBA regulation classifies a business in the consumer reporting market to be a ''small business,'' for SBA purposes, if its annual receipts are below $7 million. The commenter argued that if a business with over $7 million in annual receipts is a ''larger participant'' under the Bureau's rule, then every business in the market is either ''small'' or ''larger,'' a result the commenter considered nonsensical.

The commenter appears to have assumed that ''larger participants,'' in 12 U.S.C. 5514(a)(2), refers to the absolute size of the businesses in question. That is not how the Bureau understands the term. The Bureau interprets ''larger participants'' to mean those persons that participate to a relatively large degree in the relevant market. Market participation often increases with the size of a business, but a small business for SBA purposes can in principle be a larger participant, depending on market structure. If the Bureau recognized a market in which all the participants happened to qualify as small businesses, under an SBA definition, that market could still have ''larger participants'' for purposes of the Dodd-Frank Act—a result the commenter's assumption would foreclose. As described above, in NAICS code 5614501, corresponding to consumer reporting, the median figure for annual receipts is less than $500,000.[78] Thus, many consumer reporting businesses that qualify as ''small businesses'' under the SBA regulation are actually larger than at least 50 percent of market participants.

The Bureau notes that the SBA has proposed to amend its size standard for the category corresponding to consumer reporting.[79] Under the SBA's proposed rule, a consumer reporting business would be a ''small business'' if it had $14 million or less in annual receipts. However, even if the SBA finalizes a regulation in accordance with this proposal, that change would not alter the degree to which various entities participate in the consumer reporting market.

Commenters may have misunderstood the relationship between the SBA's size standards and the measurement of ''larger participants'' of a market because the Bureau adapted its definition of ''annual receipts'' from the SBA's measure. The Bureau chose this approach for the convenience of covered persons. It did not intend, by doing so, to connect the SBA's ''small business'' size standard to the Bureau's larger-participant test, or to suggest that $7 million in annual receipts was chosen on that basis.[80] The SBA's measure and the Bureau's threshold are used for different purposes and targeted to different statutory objectives. In setting its size standard, the SBA considers myriad factors—such as eligibility for Federal small-business assistance and Federal contracting programs; startup costs, entry barriers, and industry competition; and technological change[81]—that differ from the concerns that motivate the Bureau's definition of ''larger participants'' in this rule. In addition, the Bureau's ''annual receipts'' criterion differs in important respects from the SBA's. For example, the SBA counts all of a person's receipts in calculating annual receipts, while the Proposed Rule counted only receipts resulting from a market-related activity. Additionally, for purposes of aggregating annual receipts, the SBA and the final rule use different tests to assess whether persons are affiliates. Under the SBA test, one person controls another (thus making the two affiliates), where one person owns at least 50 percent of voting stock of the other. Under the final rule, by contrast, for the reasons explained above, the power to vote 25 percent of a class of securities counts as control. Because of these differences, an entity's receipts as calculated under the SBA regulation may be greater than its receipts for purposes of this rule.

Another consumer reporting industry commenter stated that the Bureau should proceed very cautiously in setting the thresholds for coverage in the consumer reporting market until it has sufficient quantifiable data for establishing these thresholds. Although the Bureau has limited data, as described in the preceding section, the Bureau believes that these data are sufficient to understand the contours of the consumer reporting market and rationally set a threshold for larger participants of the market. In particular, the available data provide detail beyond summary statistics by grouping firms into size tiers, allowing the Bureau to estimate the general distribution of receipts throughout the market. This distribution of receipts, which the Bureau has relied upon for the estimates presented above, is adequate for defining a category of ''larger participants.''

In addition, the Bureau believes that one of the purposes of the nonbank supervision program as conceived by Congress is to gather more information about industries as to which little is known as compared to depository institutions. Congress underlined the importance of this effort by setting a one-year deadline for the initial larger participant rule. Thus, the Bureau believes that it should not delay its rulemaking because of imperfect data and acknowledges that the information gained from its supervisory and other activities may lead it to revise its thresholds over time.

[78] The median is estimated from data *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 5614501.

[79] 76 FR 63510 (Oct. 12, 2011).

[80] The Proposal noted that with a threshold of more than $7 million, the category of larger participants would not include any small businesses (as defined by the SBA). The Bureau did not mean to suggest that small businesses cannot, in general, be ''larger participants.''

[81] 76 FR 63513.

Finally, a few commenters recommended that the Bureau index the threshold for annual receipts for inflation. At this time, the Bureau does not intend to index for inflation because, to the extent necessary or appropriate, it expects to make adjustments to the threshold through future rulemakings to reflect not only inflation, but also other shifts in the nature and structure of the consumer reporting market and additional data as it becomes available to the Bureau.

Apportionment. As noted in the Proposal, the Bureau recognizes that there are multi-line companies that derive only a portion of their annual receipts from activities related to the consumer reporting market. The Proposed Rule provided that the only annual receipts to be considered are those ''resulting from'' activities related to the consumer reporting market.

The Bureau received a number of comments on the issue of apportionment. One consumer reporting industry representative supported the concept of apportionment, but suggested that it would be difficult and unduly burdensome unless the Bureau defines the consumer reporting market in a manner consistent with applicable statutes and industry practices. Another industry representative said that apportionment would present substantial difficulties for multi-line companies because IRS forms generally do not differentiate between income streams within organizations, and a multi-line company will need to perform burdensome calculations beyond the calculations IRS forms require.[82] A group representing attorneys engaged in commercial law stated that the Proposed Rule would likely require participants to overhaul their accounting systems to segregate revenue by activity type, at a significant cost, in order to determine whether they are larger participants or to respond to Bureau assertions on that point. A consumer group suggested that the Bureau should count a company's total annual receipts, from any of its revenue streams, toward the larger-participant threshold. This commenter stated that determining a company's status as a larger participant using total annual receipts would be much simpler than trying to segregate annual receipts from market-related activities, and would serve to prevent evasion by reducing the temptation for companies to misclassify the source of their revenues to avoid supervision. A group representing attorneys recommended that the Bureau provide greater clarity in the definition of the categories of annual receipts to be calculated to put regulated parties on notice of the applicable measurement. Another commenter said that the Bureau should define the term ''apportionment'' and use that definition when describing the aggregation of annual receipts for affiliated companies.

The Bureau believes it is appropriate to permit apportionment of annual receipts. In some instances there may be nonbank covered persons that have significantly different business lines, with certain business lines not relating to the consumer reporting market. At the same time, the Bureau acknowledges the concerns regarding burdens associated with apportionment. The Bureau, however, believes that participants of the consumer reporting market are reasonably aware of the sources of their revenue, and should thus be able to apportion without undue burden. Moreover, it bears noting that market participants are not required to apportion their annual receipts on a periodic or other basis under the final rule. On the contrary, the Bureau has decided to permit apportionment, in part, to enable a nonbank covered person to apportion its annual receipts if it wished to challenge an assertion by the Bureau that it qualified as a larger participant. In such a case, the person may provide records, documents or other evidence to the Bureau reasonably identifying that portion of its annual receipts that do not result from market-related activities. Furthermore, if the person wishes not to apportion receipts in challenging such an assertion, it may forego doing so, with the sole result being that it will have higher annual receipts counted toward the $7 million threshold for larger-participant status. Many larger participants would be above the threshold with or without apportionment.

The Bureau does not believe that it would be helpful to provide specific guidance on what accounting methods entities should use to apportion annual receipts. The Bureau believes that nonbank covered persons facing different circumstances may appropriately use different apportionment methods that fairly reflect those circumstances and their business operations. Therefore the Bureau declines to set forth specific requirements or guidance on how to apportion annual receipts. The Bureau also declines to define the term ''apportionment.'' The term is not used in the regulatory text; rather, apportionment is a concept that conveys the inclusion of receipts ''resulting from'' activities related to the consumer reporting market. Accordingly, the Bureau adopts in the final rule the provision that the only receipts counting toward the calculation of ''annual receipts'' are those ''resulting from'' activities related to the covered market.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.[83] The Proposal set forth a preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In addition, the Bureau has consulted or offered to consult with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration in connection with this rulemaking, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The final rule establishes, in part, the scope of the Bureau's nonbank supervision program, particularly with respect to ''larger participants of other

[82] This commenter appears to have misapprehended the Proposed Rule to mandate that IRS forms are the only permissible source of information about a company's annual receipts. The commenter recommended that the final rule state expressly that a market participant may make a good faith determination of its annual receipts based on records maintained in the ordinary course of business. The Bureau does not believe such an addition to the regulation is necessary, because the rule does not restrict companies to relying solely on their IRS forms. The criterion by which market participation is measured is annual receipts resulting from consumer reporting; the Bureau is aware that this specific quantity does not necessarily correspond, for every company, to a figure reported to the IRS. In addition, the Proposal explained that a person wishing to dispute whether it is a larger participant may provide the Bureau records, documents, or other evidence reasonably identifying what portion of its annual receipts result from activities falling outside a covered market.

[83] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

markets for consumer financial products or services,'' made subject to supervision by 12 U.S.C. 5514(a)(1)(B). The rule establishes general definitions, concepts, protocols, and procedures relating to the Bureau's supervision of larger participants and the assessment of larger-participant status. The rule also identifies a market for consumer reporting in which the Bureau will conduct supervision and defines the ''larger participants'' of that market. Participation in this market is assessed on the basis of annual receipts, generally averaged over three years, resulting from consumer reporting activities. If a nonbank covered person's annual receipts from consumer reporting are over a threshold of $7 million, the entity is a larger participant subject to the Bureau's supervisory authority. With the rule in place, the Bureau will be able to commence supervisory activities in the identified consumer reporting market.

B. Potential Benefits and Costs to Consumers and Covered Persons

The analysis considers the benefits, costs, and impacts of the key provisions of the rule against a pre-statutory baseline; that is, the analysis evaluates the benefits, costs, and impacts of the relevant statutory provisions and the regulation combined.[84] Before the Dodd-Frank Act, there was no Federal program for supervision of nonbank participants of the consumer reporting market. With the statute and the final rule in effect, the Bureau will be able to supervise participants of the consumer reporting market who have annual receipts from consumer reporting of more than $7 million.

The Bureau notes at the outset that limited data are publicly available with which to quantify the potential benefits, costs, and impacts of the rule. For example, although the Bureau has general quantitative information, discussed above, on the number of market participants and their receipts, the Bureau lacks detailed information about their rate of compliance or non-compliance with Federal consumer financial law (including the FCRA) and about the range of compliance mechanisms and their costs to market participants. The Proposal requested information to support the analysis of benefits, costs, and impacts, but commenters did not provide, or identify sources for, relevant data.[85] Over time, the Bureau expects to develop information related to these topics through its supervisory activities.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as its experience of supervision.

The discussion below describes three categories of benefits and costs. First, after the rule authorizes Bureau supervision in the consumer reporting market, participants of the market may respond to the possibility of supervision by changing their systems and conduct. Second, when the Bureau undertakes supervisory activity at specific firms, those firms will incur costs from participating in supervision, and the results of these individual supervisory activities may also produce benefits and costs.[86] Third, the Bureau analyzes the costs associated with firms' efforts to assess whether they qualify as larger participants under the rule.

1. Benefits and Costs of Responses to the Possibility of Supervision

The final rule subjects larger participants of the consumer reporting market to the possibility of Bureau supervision. That the Bureau is authorized to undertake supervisory activities with respect to a nonbank covered person that qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities regarding that covered person in the near future or at all. Rather, as explained in the Proposal, supervision of any particular larger participant will be probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed by the factors set forth in 12 U.S.C. 5514(b)(2), relating to the size and transaction volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it might be supervised and may gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

As the Proposal pointed out, the prospect of potential supervisory activity may create an incentive for larger participants to increase compliance with Federal consumer financial law. They may anticipate that by doing so (and thereby decreasing risks to consumers), they can decrease their chances of actually being subject to supervision as the Bureau evaluates the factors outlined above. In addition, an actual examination would likely reveal any past or present noncompliance, which the Bureau may seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants may therefore judge that the prospect of supervision has increased the potential consequences of noncompliance with Federal consumer financial law, and they may seek to decrease that risk by curing any noncompliance.

The Bureau believes it is likely that market participants will increase compliance in response to the Bureau's supervisory activities authorized by this rule. However, because the rule itself does not require any entity to alter its provision of consumer reporting products or services, any estimate of the amount of increased compliance would be a prediction of market participants' behavior. The data the Bureau currently has do not support a specific quantitative prediction. But, to the extent that entities increase their compliance in response to the rule, that response will result in both benefits and costs.[87]

[84] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[85] One commenter asserted without explanation that medium-sized firms would need to dedicate between three and eight employees to the supervision process during the two weeks before and two weeks of an examination. Several others suggested, also without explanation, that they would each need to hire an additional employee to respond to Bureau supervision.

[86] Pursuant to section 12 U.S.C. 5514(e), the Bureau also has supervision authority over service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. The service providers to consumer reporting larger participants might include data aggregators, law firms, account maintenance services, call centers, data and record suppliers, and software providers. The Bureau does not have data on the number or characteristics of service providers to the roughly 30 larger participants of the consumer reporting market. The discussion herein of potential costs, benefits, and impacts that may result from this Proposal generally applies to service providers to larger participants.

[87] Another approach to considering the benefits, costs, and impacts of the rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to more fully inform the rulemaking.

a. Benefits From Increased Compliance

Increased compliance would be beneficial to consumers that are affected by consumer reporting. As discussed above, the potential pool of affected consumers is very broad. Consumer reporting is integrally connected with many consumer financial products and services and plays a key role in decisions regarding such products and services. A number of Federal consumer financial laws, including, among others, the FCRA and Title X of the Dodd-Frank Act, and related regulations, offer substantive protections to consumers regarding consumer reporting products and services. Increasing the rate of compliance with such laws will benefit consumers by providing more of the protections mandated by those laws.

For example, the FCRA encourages providers of consumer reports (as defined in the FCRA) to ensure that they provide accurate information.[88] Therefore, increased compliance with the FCRA would likely result in the availability of more accurate consumer report information in the marketplace. Because consumer report information is often critical in decisions regarding consumer financial products and services, more accurate information could lead to better decisions.[89] Inaccurate information, for example, could lead to a consumer's being denied a loan that the consumer could afford to and would be likely to repay. Inaccurate information could also lead to a consumer's being offered credit at an interest rate higher than would be available if the creditor knew the consumer's true credit history. Conversely, some inaccuracies, by exaggerating some consumers' credit worthiness, may enable such consumers to receive lower interest rates than they otherwise would but understate their risk of default. In all these cases, increasing the accuracy of consumer report information should improve the pricing and allocation of credit.

As another example, consumers have relatively little control over when and with whom a consumer reporting business shares information about them. Federal consumer financial law protects consumers by restricting the dissemination of certain information about them. Increased compliance would mean less disclosure of consumer information to improper recipients or in inappropriate circumstances.

b. Costs of Increased Compliance

On the other hand, as discussed in the Proposal, increasing compliance involves costs. In the first instance, those costs will be paid by the market participants that choose to increase compliance. Entities may need to hire or train additional personnel to effectuate any changes in their practices that are necessary to produce the increased compliance. They may need to invest in systems changes to carry out their revised procedures. In addition, entities may need to develop or enhance compliance management systems, to ensure that they are aware of any gaps in their compliance. Such changes would also require investment and incur operating costs.

An entity that does incur costs in support of increasing compliance may try to recoup those costs by increasing the prices of its consumer reporting products and services.[90] Whether and to what extent this increase occurs will depend on competitive conditions in the consumer reporting market. For example, if changed procedures produced more valuable consumer report information—for example, due to improved accuracy—a company might be able to charge more for the information. If demand for consumer report information is fairly inelastic, consumer reporting entities may, in the short or medium term, be able to shift to the users of consumer reports a larger portion of the cost of increased compliance.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the rule include the effects of individual examinations or other supervisory activity that the Bureau may conduct in the consumer reporting market.

a. Benefits of Supervisory Activities

The information gathered during supervisory activity will be useful in several ways. For example, when an examination uncovers deficiencies in a company's policies and procedures, both the company and the Bureau will become aware of those deficiencies. The Bureau's examination manual calls for the Bureau to prepare a report of each examination and to assess the strength of the subject firm's compliance mechanisms and the risks the firm poses to consumers, among other topics. The Bureau will share the examination report with the subject firm, because one purpose of supervision is to inform the firm of problems detected by examinations.

Thus, for example, an examination may reveal that, due to the design of its procedures, a company has an unexpectedly high rate of errors in its consumer report information. Or an examination may determine that a company's handling of consumer information poses inappropriately high risk of improper disclosure. Examiners may find evidence of widespread noncompliance with Federal consumer financial law, or they may identify specific areas where a company has inadvertently failed to comply. The Bureau might conclude that an inadequacy in a company's information system poses avoidable risks to consumers. These examples are only illustrative of what kinds of information an examination might deliver.

Detecting and informing companies about such problems should be beneficial to consumers. When the Bureau notifies a company about risks associated with an aspect of its activities, the company is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau may also inform companies about risks they pose to consumers short of violating the law. Action to reduce those risks would be a benefit to consumers.

Given the obligations consumer reporting entities have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision may also benefit firms under supervision by detecting compliance problems early. When a firm's level of noncompliance has attracted an enforcement action, the company must both face the penalties for noncompliance and adjust its systems to cure the breach. Changing practices at this point can be expected to be relatively difficult, because a level of noncompliance that has attracted the attention of enforcement authorities or

[88] *See Safeco Ins. Co. of Am.* v. *Burr,* 551 U.S. 47, 52 (2007) (''Congress enacted the FCRA in 1970 to ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.''); *see also Gelman* v. *State Farm Mut. Auto. Ins. Co.,* 583 F.3d 187, 191 (3d Cir. 2009); *Vassalotti* v. *Wells Fargo Bank,* 815 F.Supp.2d 856, 863 (E.D. Penn. 2011).

[89] Several studies have identified the problems that inaccurate consumer reporting creates in credit markets. *E.g.,* Avery, Robert B., et al., *Credit Report Accuracy and Access to Credit,* 2004 Federal Reserve Bulletin 297, 314–15 (estimating fraction of individuals for whom inaccuracies in credit reports might affect credit terms); *see also id.* 301–02 (citing prior research).

[90] Sometimes the providers of consumer financial products and services bear the cost of consumer reports; sometimes consumers pay directly for consumer reports, as when a creditor requires a consumer to pay for the report the creditor uses in reviewing the consumer's loan application.

private plaintiffs will sometimes be severe enough to represent a serious failing of a company's systems. Supervision may detect flaws at a point when correcting them is relatively inexpensive. And catching problems before they involve a company in costly enforcement or private litigation, and potentially the payment of legal penalties or other forms of relief, could save the company substantial time and money. In short, supervision might benefit firms under supervision by reducing the need for other activities, like enforcement and private litigation, to achieve a given compliance rate. Accordingly, a shift of some amount of regulatory oversight from enforcement to supervision would be beneficial to market participants.

Further potential benefits, to consumers, to covered persons, or to both, may arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and enforcement of Federal consumer financial law, and to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type will depend on what the Bureau learns during supervision and how it uses that knowledge.

b. Costs of Supervisory Activities

The potential costs of actual supervision arise in two categories. The first involves the costs of individual firms' increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar in nature to the possible compliance costs, described above, that larger participants in general may incur in anticipation of possible supervisory activity. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

As described in the section-by-section analysis of the definition of ''supervision and supervisory activity,'' in Section V above, supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, generally, Bureau examiners begin by contacting the firm for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners will determine the scope of the on-site exam. While on-site, examiners will spend some time in further conversation with management about the firm's processes and procedures. The examiners will also review documents, records, and accounts to assess the firm's compliance and evaluate the firm's compliance management systems. As with the Bureau's bank examinations, examinations of nonbank covered persons will involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information a firm can expect the examiners to request and review, both before they arrive and during their time on-site. The primary cost a firm faces in connection with an examination is the cost of employees' time to collect and provide the necessary information.[91]

At this early stage in its nonbank supervision program, the Bureau does not have precise estimates of the expected duration and frequency of its examinations and the resources that firms may expend to cooperate with such examinations. Further, the duration of any examination of a firm will depend on a number of factors, including the size of the firm, the compliance or other risks identified, whether the firm has been examined previously, and the demands on the Bureau's supervisory resources imposed by other firms and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that firms may incur.

At firms within the category of larger participants with annual receipts close to the threshold of more than $7 million, typical examinations might be relatively brief. Bureau examiners might review materials and interview employees for four weeks, and a firm might devote the equivalent of one full employee during that time and for two weeks beforehand to prepare materials for the examination. The typical cost of the employee involved in responding to supervision can be expected to be roughly $49 per hour.[92] Six weeks of such an employee's time would cost less than $12,000.[93] For a larger participant with annual receipts from consumer reporting of $7 million, this cost would represent 0.17 percent of those annual receipts.[94] Even if an examination required twice as much employee time, the cost would still come to only 0.34 percent of annual receipts for such a firm.[95]

By contrast, at the very largest firms in the market, supervisory activity could last much longer. Given the complexity of a very large company, Bureau examiners might need months to review the relevant materials. Such a company might dedicate the equivalent of two full-time employees to participate in the examination.[96] The cost of eight months of employee time (four months each for two employees) would be about $68,000, or about 0.07 percent of annual receipts for a firm with $100 million in receipts.

For a firm of a more typical size, which would be between the two size groupings discussed above, Bureau examiners might review materials and interview employees for eight weeks, and a firm might devote the equivalent of one full employee during that time

[91] The Bureau recognizes that responding to examinations and other supervisory requests will entail certain other costs, such as photocopying and other costs of producing information. The costs of collecting and producing information may include more general costs for evaluating how to participate in and respond to supervisory activity. The Bureau has focused on staff time in collecting and providing information in order to provide an approximate sense of the magnitude of the key cost involved.

[92] Bureau of Labor Statistics, (BLS), National Compensation Survey, Employment Cost Trends, available at *http://www.bls.gov/ncs/ect/*. BLS data for ''nondepository credit intermediation'' indicate that the mean hourly wage of a compliance officer in that sector is $33.40. BLS data also indicate that salary and wages constitute 67.5 percent of the total cost of compensation. Dividing the hourly wage by 67.5 percent yields a wage (including total costs, such as salary, benefits, and taxes), rounded to the nearest dollar, of $49 per hour.

[93] All figures assume 40 hours of work per week.

[94] The Proposal described four business-weeks of employee time as ''a fraction of a percent'' of revenues, for a service provider that was a small business. Six business-weeks is also a fraction of a percent, as estimated above.

[95] One commenter, the National Credit Reporting Association, reported that a survey of its members in April 2012 found that consumer reporting businesses with annual receipts near the threshold typically have net profit margins of six to eight percent. The commenter did not explain the methodology for its survey or explain what statistical concept it meant by ''typical.'' Accordingly, the Bureau does not regard the commenter's six to eight percent figure as scientifically reliable. However, if the commenter is correct that this range represents a profit margin the Bureau could reasonably assume for the smallest businesses qualifying as larger participants under the rule, the estimated upper bound for the cost of examinations (0.17 percent for businesses at the threshold of qualifying as larger participants and 0.008 percent industry-wide) is relatively minor.

[96] Of course, multiple individuals, both inside and outside a firm, might participate in a supervisory activity. This rough estimate is meant to represent the aggregate amount of labor resources a company might dedicate to responding to supervisory activity.

and for two weeks beforehand to prepare materials for the examination. Thus, a typical exam would take ten weeks of such an employee's time and would cost less than $20,000.

To put the market-wide impact of supervision in perspective, the Bureau estimates that the average annual market-wide cost of supervision is 0.008 percent of receipts. The Bureau does not expect to supervise every larger participant in every year. For purposes of estimation, the Bureau assumes that each of the six largest market participants will be examined every other year, at a cost of $68,000 each, giving an average annual cost of $204,000. The Bureau assumes that each of the remaining larger participants will be examined once every three years, at a cost of $20,000 each, giving an average annual cost of $160,000. The total staff cost of responding to supervision comes to approximately $364,000 annually.[97] This figure represents 0.008 percent of the aggregate annual receipts—$4.3 billion [98]—of the larger participants of the consumer reporting market.

The Bureau declines to predict, at this point, precisely how many examinations in the consumer reporting market it will undertake in a given year. Once the rule takes effect, the Bureau will be able to undertake supervisory activity in the identified market; neither the Dodd-Frank Act nor the final rule specifies a particular level or frequency of examination. The frequency of examination will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means.

3. Costs of Assessing Larger-Participant Status

Finally, the Bureau acknowledges that in some cases companies may incur costs in assessing whether they qualify as larger participants and potentially disputing their status. The rule is designed to minimize those costs.

Larger-participant status depends on a quantity, annual receipts, that for many companies should correspond to data they already report to the IRS. For such companies, assessing whether they satisfy the rule's definition of larger participants will involve minimal expense. Potential differences from the IRS figures arise only for companies that have annual receipts arising from activities besides consumer reporting as defined in the rule. Some firms may have multiple distinct lines of business. The Bureau believes that such firms ordinarily have records for each division of the accounting quantities—income and costs—underlying the calculation of annual receipts.

If, in addition, a company provides consumer report information sometimes for purposes excluded from the market, such as employment screening, and sometimes for purposes that fit within the rule's definition of consumer reporting, the company's accounting systems might not distinguish the two types of sale. However, most larger participants should not need such detailed information. The rule does not require market participants to submit data regularly on their annual receipts. Most of the time, a firm only needs to know its annual receipts to the extent it wants to determine in advance of any supervisory activity by the Bureau whether it is a larger participant. A firm with receipts from all activities that are above the threshold will not necessarily need to trace precisely what quantity derives from activities other than consumer reporting (as defined by the rule). A rough estimate would suffice to inform such a firm whether its consumer-reporting receipts cross the threshold. Most likely, the only firms that might need a more precise calculation of annual receipts would be those that have total receipts near the threshold and significant receipts from activities (like supporting employment screening) that would be excluded from the calculation.

The data the Bureau currently has do not support a detailed estimate of how many companies will incur such costs, or how much they might spend. Regardless, firms would be unlikely to spend significantly more on accounting systems than it would cost them to be supervised by the Bureau as larger participants. It bears emphasizing that expenditures on an accounting system intended to prove a firm is not a larger participant cannot necessarily protect a firm from being supervised. The Bureau can supervise a firm whose conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C), poses risks to consumers. Thus, a firm choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes it is unlikely that any but a very few firms would undertake such expenditures.

4. Consideration of Alternatives

The Bureau considered selecting different thresholds for larger-participant status in the consumer reporting market. If the threshold were much higher, say $100 million, then the Bureau's supervisory authority under the rule would reach only the very largest firms—about six entities—in the market. Such an approach would reduce both the expected benefits to consumers and the costs to covered persons, because fewer firms would be subject to the Bureau's supervisory authority. As the Proposal explained, if a change in a firm's systems or practices results in increased compliance with Federal consumer financial law, such a change would produce greater benefit at a large firm than at a smaller one. The largest firms are expected to affect the most consumers, and any increase in compliance by such firms would benefit a large number of consumers.

At which market participants supervision produces the greatest benefits or costs due to increased compliance depends on where the greatest risks to consumers lie. If some firms below $100 million in annual receipts have particular compliance problems, bringing such firms within the Bureau's supervisory authority, and conducting actual examinations at those firms, can be expected to produce larger increases in compliance than would supervising larger firms. The statutory criteria regarding supervision should ensure that those larger participants that are supervised are the same firms where the benefits from supervision are likely to be highest.[99] The selected threshold of $7 million gives the Bureau the flexibility to direct its supervisory resources to the firms where supervision will be of greatest use, even if they are not the very largest in the market.

5. Responses to Comments

The Bureau received a number of comments on its preliminary analysis under 12 U.S.C. 5512(b)(2).

Several comments related to the Bureau's characterization of supervision as probabilistic. One commenter

[97] As noted above, there are roughly 30 entities whose annual receipts from consumer reporting exceed the $7 million threshold.

[98] *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 5614501. $4.3 billion represents 94 percent of all receipts for ''consumer credit reporting agencies,'' which total $4.55 billion.

[99] 12 U.S.C. 5514(b)(2).

criticized the Bureau for asserting that the rule only authorizes supervisory activities and that the Bureau will likely not supervise all larger participants in any given year. According to this commenter, the Bureau was trying to avoid acknowledging the costs of supervision. Later, when the Bureau actually undertakes supervisory activity, the commenter claims that the Bureau will not consider the benefits, costs, and impacts because such consideration is only necessary for rulemaking, not supervision. Another commenter argued that the Bureau had assumed the rule would produce increased compliance yet had discounted the costs as ''probabilistic.'' One commenter suggested that firms will make additional efforts at compliance, in anticipation that they might be supervised, and will therefore bear the resulting costs regardless of how often the Bureau actually conducts supervisory activity.

As reflected above, the Bureau continues to believe that supervision of specific entities is probabilistic in nature. The Bureau has recognized two stages in which the rule could increase compliance, with its attendant benefits and costs. First, the Bureau acknowledges that companies may respond to the possibility of the Bureau's supervision activity by changing their systems and conduct to produce more compliance with Federal consumer financial law. The discussion above presented benefits and costs associated with entities' changing their conduct in anticipation of possible supervision. Second, in the course of actual examinations, the Bureau may uncover specific problems that companies then correct.

Commenters offered somewhat contradictory comments regarding the rate of existing compliance. Some suggested that the Bureau had underestimated the power of firms' existing incentives—from sources such as enforcement and supervision by State regulators—to comply with law. Such commenters asserted that market participants are already aware of the risks of enforcement action and regulatory oversight and have effective compliance mechanisms. Thus, the commenter concluded, the benefits of the rule are smaller than the Proposal assumed. Another commenter stated that the rule will be more costly than the Proposal acknowledged, because firms will have to develop compliance policies and procedures, including by hiring new staff and developing new systems. Yet another commenter contended that because the rule is not substantive, but only establishes the possibility of supervision, the Bureau cannot assume that companies will increase their legal compliance in response.

The comments do not lead the Bureau to different conclusions regarding the benefits and costs of increased compliance as a potential effect of the rule. If the rule incentivizes companies to develop compliance management systems that they do not already have, that result would produce benefits in the form of improved compliance and costs involved in creating and administering such systems. As a general matter, the Bureau believes it is unlikely that companies can consistently comply with the law without having reasonably thorough systems for promoting and monitoring compliance. Without such systems, a company may happen to comply with law, but it cannot be assured whether it is doing so; cannot reliably learn of problems and fix them; and cannot modify its practices to keep up with changes in the law. If, therefore, the rule will motivate firms to develop compliance systems, the current rate of compliance is unlikely to be as high as some commenters suggested.

If, on the other hand, compliance levels are already high—in part because of incentives one commenter pointed out, arising from Federal and State enforcement and State supervisory activity—then the benefits of the rule will be lower. However, to achieve high levels of compliance, firms presumably already incur corresponding costs. The compliance-related costs of the rule will therefore be lower as well. In addition, the Bureau's likely level of supervisory activity over time will also be lower. The commenters provided no evidence of the existing level of compliance of firms in the consumer reporting market. In any event, whatever particular increase in compliance may occur as a result of the rule, the benefits and costs of that increase are associated.[100]

Commenters also questioned the Bureau's estimates of how much supervision would cost firms. An industry association asserted that the Bureau's estimate, for actual supervisory activity, of four full weeks of employee time at a small firm was a significant underestimate. The commenter did not offer an alternative estimate, but the commenter argued that even a month of employee time would be burdensome for a small business.[101]

The Bureau acknowledges that staff time can be a cost for a firm responding to particular supervisory activity. The Bureau has estimated the magnitude of that cost for firms of various sizes. The amount of staff time involved represents the Bureau's experience of supervision. That amount may be an underestimate or overestimate for some supervisory activities, depending on the circumstances. But even if all supervisory activity cost twice as much as the Bureau estimated, the cost would still, as noted above, be 0.34 percent of the annual receipts of an individual firm at the $7 million threshold.

Several commenters suggested that the rule would force companies to develop new accounting systems to generate data on the amount of receipts attributable to consumer reporting. It bears emphasis that the rule imposes no such requirement. The Bureau has not required market participants regularly to submit accounting data. Market participants might be motivated to alter accounting systems to some degree to improve their assessments of whether they qualify as larger participants, but the Bureau is not persuaded by these commenters that firms will spend significant amounts on such alterations. As noted above, a firm with multiple lines of business presumably knows basic accounting information, such as receipts, for each division. If existing accounting systems do not provide detailed information corresponding to the rule's definition of annual receipts, the discrepancy would only relate to the amount of sales a company makes for purposes, like employment screening, that the rule excludes from the consumer reporting market. As discussed above, a firm would only need to know such information in detail to the degree that the precise facts might render the firm not a larger participant. Moreover, firms would be unlikely to spend significantly more on accounting systems than it would cost them to be supervised by the Bureau.

[100] According to several commenters, the Bureau also overlooked the cost to firms organizing their compliance management policies in a format consistent with the Bureau's supervision manual. These commenters asserted that companies would, anticipating the possibility of supervisory activity, expand their compliance management systems beyond what is appropriate for assuring compliance. Yet the Bureau's examination manual does not specify a particular format for compliance management policies. Of course, some companies may develop more involved compliance management systems than would be necessary or appropriate for their circumstances. The Bureau has, and commenters provided, no information on the basis of which to assess the possible magnitude of such an effect.

[101] Several businesses with annual receipts near the $7 million threshold suggested they would each need to hire an additional employee to respond to Bureau supervision. None provided any support for the assertion that the Bureau's supervisory activity would require a dedicated employee at a firm of such size.

One commenter also discussed how the costs of supervision will affect the consumer reporting market. The commenter argued that the cost of undergoing examination will be most easily borne by large businesses. The commenter inferred that the existence of supervision would create an economy of scale that would favor the growth of large firms in the market at the expense of smaller participants. The commenter did not explain whether this hypothesized market effect would be beneficial or harmful, either to consumers or to covered persons.

Even if, as the commenter contends, a larger firm is better able to bear the costs of supervision, the rule as a whole does not necessarily burden smaller firms disproportionately. The Bureau may supervise the largest firms more frequently than those that are just above the threshold of qualifying as larger participants. As the Proposal noted, the benefits gained from detecting noncompliance are likely to be greater when the firm under examination is larger. Larger firms affect larger numbers of consumers. The benefit from any improvement in policies and processes will therefore be multiplied across the experiences of more consumers. In addition, participants' asset sizes and transaction volumes are among the 12 U.S.C. 5514(b)(2) factors that the Bureau will consider in prioritizing its supervisory activities. There is little reason to believe that the Bureau's general supervision of larger participants of this market will skew the playing field in favor of the largest firms—particularly in view of the fact, explained above, that the staff costs of responding to supervisory activity are likely to be small even for firms just above the larger-participant threshold.

This commenter also argued that the costs of examination will be passed on to consumers and will therefore increase the cost of credit. The commenter offered no data or argument to support this assertion. Whether and to what extent newly supervised firms shift the cost of supervision, or of increased compliance, to their customers who then pass the cost increase on to consumers will depend on complex market conditions. The Bureau believes any such effects are likely to be very small. In contrast, as discussed above, some consumers may see their costs of credit decrease, if the availability of more accurate consumer report information helps creditors assess them better as credit risks. Conversely, for some consumers, the availability of more accurate information may lead their costs of credit to increase. In general, the Bureau does not have enough information to assess in detail whether and for what fraction of consumers the rule might increase or decrease the cost of credit. But the overall result should be a more efficient allocation of credit.

C. Impact on Depository Institutions and Credit Unions With Total Assets of $10 Billion or Less, and Impact on Consumers in Rural Areas

The final rule does not apply to depository institutions or credit unions of any size.[102] Nor would the rule have a unique impact on rural consumers.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[103] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[104]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[105]

The undersigned certified that the Proposal, if adopted, would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis was therefore not required. The final rule adopts the Proposal, with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The rule will define a class of firms as larger participants of the consumer reporting market and thereby authorize the Bureau to undertake supervisory activities with respect to those firms. Because the rule adopts a threshold for larger-participant status of $7 million in annual receipts resulting from consumer reporting activities, larger market participants would generally be above the existing SBA small-business size standard for this market: annual receipts at or below $7 million. Moreover, the rule does not itself impose any obligations or standards of conduct on businesses outside the category of larger participants. The rule therefore does not have a significant impact on a substantial number of small businesses.[106]

Additionally, and in any event, the Bureau believes that the rule would not result in a ''significant impact'' on any small entities that could be affected. As previously noted, whether the Bureau would in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the frequency and extent of such activity) would depend on a number of considerations, including, among others, the Bureau's allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, whether and when an entity in the consumer reporting market would be supervised is probabilistic. Moreover, even in cases where supervisory activity were to occur, the costs that would result from such activity are expected to

[102] As potential users of consumer reporting services, depository institutions and credit unions might see changes in the quality and pricing of such services. The Bureau knows of, and commenters have suggested, no reason to think that these entities would be negatively affected by the final rule.

[103] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any governmental units or not-for-profit organizations to which the Proposal would apply.

[104] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment.

[105] 5 U.S.C. 609.

[106] The Proposal hypothesized two circumstances in which a business might be a larger participant of the consumer reporting market yet be a small business for RFA purposes. First, a nonbank covered person that was not a small business might become a small business during the second year after it qualified as a larger participant. This occurrence would be rare, because relatively few nonbank covered persons appear (according to the Economic Census data) to have annual receipts near the $7 million threshold. Moreover, the general method of averaging a business's receipts over three years reduces the sensitivity of the ''annual receipts'' criterion to fluctuations from a single year. The second hypothesized circumstance involves the rule's definition of ''control,'' which is somewhat more expansive than the SBA's. A company might be affiliated with another company for purposes of this rule, so that the two companys' receipts would be aggregated towards the $7 million threshold. Yet the SBA's method might not treat the two companies as affiliated, and their separate receipts might not cross the $7 million line. The Bureau anticipates no more than a very few such cases in the market covered by today's rule.

be minimal in relation to the overall activities of the firm.[107]

Finally, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. As the Bureau noted in the Proposal, because the rule does not address service providers, effects on service providers need not be addressed for purposes of this RFA analysis. Even were such effects relevant, the Bureau continues to believe that it is very unlikely that any supervisory activities with respect to the service providers to the approximately 30 larger participants of the consumer reporting market delineated in the rule would result in a significant economic impact on a substantial number of small entities.[108]

One commenter pointed out that the SBA has issued a notice of proposed rulemaking, considering an increase in the small business size standard for the consumer reporting market to $14 million in annual receipts. The SBA's proposal does not affect the accuracy of the Bureau's RFA analysis, because the size standard has not yet changed. In any event, even if a $14 million standard applied, the rule would still not impact a ''substantial number'' of small entities. The Bureau estimates, using the Economic Census data, that the rule treats as larger participants approximately 30 consumer reporting entities out of approximately 410 firms in the market. Out of these 410 entities, the Bureau estimates that approximately 393 market participants would be small business entities under the SBA's proposed size standard of $14 million. Meanwhile, among the about 30 larger participants of the consumer reporting market, about 13 might fall below a $14 million threshold. Thus, the final rule would impact only 3.3 percent of consumer reporting entities that might be considered small businesses under the SBA's proposal, and the impact on these entities would not be significant anyway. The rule would thus not have a significant impact on a substantial number of small entities, even if the SBA were to adopt its proposed change to the relevant definition of small business.

One commenter argued that the Bureau was incorrect in taking the positions that ''[t]he rule would not itself impose any obligations or standards of conduct on larger participants for purposes of [Regulatory Flexibility Act] analysis'' and that ''whether and when an entity in the * * * consumer reporting market[] would be supervised is probabilistic.'' [109] This commenter stated that the actual imposition of examination requirements will have an effect on small businesses, because the consequences of supervision could include an increase in the cost of credit and a diminution in access to credit. The commenter argued that the Bureau should not have certified the Proposed Rule and should have convened a panel and consulted representatives of small entities in compliance with the small business protection requirements set forth in the Small Business Regulatory Enforcement Fairness Act (SBREFA), as amended by Section 1100G of the Dodd-Frank Act.

The Bureau believes that its certification of the Proposed Rule was appropriate and that, as a result, the convening of a panel to consult with small entities was not required under the RFA. The Proposed Rule would not have imposed any obligations or standards of conduct on entities for purposes of RFA analysis, but rather would have authorized the Bureau to exercise its supervisory authority with respect to a class of entities. Thus, the Proposal, like the final rule, does not give rise to a regulatory compliance burden for small entities. In any event, the Bureau properly found (as described above with respect to the final rule) that even if the Proposed Rule were considered to impose regulatory obligations for purposes of RFA analysis, it would not have created a significant impact on a substantial number of small entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau determined that the Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the final rule, which adopts the Proposal in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection adds Part 1090 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

Subpart A—General

Sec.

1090.100 Scope and purpose.
1090.101 Definitions.
1090.102 Status as larger participant subject to supervision.
1090.103 Assessing status as a larger participant.

Subpart B—Markets

1090.104 Consumer Reporting Market.

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

Subpart A—General

§ 1090.100 Scope and purpose.

This part defines those nonbank covered persons that qualify as larger participants of certain markets for consumer financial products or services pursuant to 12 U.S.C. 5514(a)(1)(B) and (a)(2). A larger participant of a market covered by this part is subject to the supervisory authority of the Bureau under 12 U.S.C. 5514. This part also establishes rules to facilitate the Bureau's supervision of such larger participants pursuant to 12 U.S.C. 5514(b)(7).

§ 1090.101 Definitions.

For the purposes of this part, the following definitions apply:

[107] As discussed above, the cost of participating in an examination might be roughly 0.17 percent of annual receipts for a firm near the $7 million threshold. The proportion would be larger for a smaller firm, but the impact will still not be substantial.

[108] As the Bureau noted in the Proposal, it reaches this judgment in light of the number of relevant small firms in the relevant NAICS codes. For example, many of these service providers would be considered to be in industry 522390, ''Other activities related to credit intermediation,'' or 518210, ''Data Processing, Hosting, and Related Services.'' According to the 2007 Economics Census, there are more than 5,000 small firms in the first industry group and nearly 8,000 in the second. The number of firms connected to the 30 larger participants of the consumer reporting market is likely to be only a small fraction of these two figures. Moreover, the impact of supervisory activities at such service providers would likely be no more intensive—and probably much less, given the Bureau's exercise of its discretion in supervision—than at the larger participants themselves. As discussed above, supervisory activities at larger participants would not be expected to give rise to a significant economic impact. Finally, because it is very unlikely that the Bureau would supervise many of such entities, a substantial number of entities would not be involved.

[109] 77 FR 9606.

Affiliated company means any company (other than an insured depository institution or insured credit union) that controls, is controlled by, or is under common control with, a person.

(1) For purposes of this definition ''company'' means any corporation, limited liability company, business trust, general or limited partnership, proprietorship, cooperative, association, or similar organization.

(2) A person has control over another person if:

(i) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities or similar ownership interest of the other person;

(ii) The person controls in any manner the election of a majority of the directors, trustees, members, or general partners of the other person; or

(iii) The person directly or indirectly exercises a controlling influence over the management or policies of the other person.

Assistant Director means the Bureau's Assistant Director for Nonbank Supervision or her or his designee. The Director of the Bureau may perform the functions of the Assistant Director under this part. In the event there is no such Assistant Director, the Director of the Bureau may designate an alternative Bureau employee to fulfill the duties of the Assistant Director under this part.

Bureau means the Bureau of Consumer Financial Protection.

Completed fiscal year means a tax year including any fiscal year, calendar year, or short tax year. ''Fiscal year,'' ''calendar year,'' ''tax year,'' and ''short tax year'' have the meanings attributed to them by the IRS as set forth in IRS Publication 538, which provides that:

(1) A ''fiscal year'' is 12 consecutive months ending on the last day of any month except December 31.

(2) A ''calendar year'' is 12 consecutive months ending on December 31.

(3) A ''tax year'' is an annual accounting period for keeping records and reporting income and expenses, or, if appropriate, a short tax year. An annual accounting period does not include a short tax year.

(4) A ''short tax year'' is a tax year of less than 12 months.

Consumer means an individual or an agent, trustee, or representative acting on behalf of an individual.

Consumer financial product or service means any financial product or service, as defined in 12 U.S.C. 5481(15), that is described in one or more categories under:

(1) 12 U.S.C. 5481(15)(A) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(2) Clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) and is delivered, offered, or provided in connection with a consumer financial product or service referred to in paragraph (1) of this definition.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Larger participant means a nonbank covered person that has met a test under subpart B of this part within the period provided in § 1090.102 of this part.

Nonbank covered person means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

(1) Any person that engages in offering or providing a consumer financial product or service; and

(2) Any affiliate of a person that engages in offering or providing a consumer product or service if such affiliate acts as a service provider to such person.

Person means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Supervision and supervisory activity mean the Bureau's exercise, or intended exercise, of supervisory authority, including by initiating or undertaking an examination, or requiring a report of a person, pursuant to 12 U.S.C. 5514.

§ 1090.102 Status as larger participant subject to supervision.

A person qualifying as a larger participant under subpart B of this part shall not cease to be a larger participant under this part until two years from the first day of the tax year in which the person last met the applicable test under subpart B.

§ 1090.103 Assessing status as a larger participant.

(a) If a person receives a written communication from the Bureau initiating a supervisory activity pursuant to 12 U.S.C. 5514, such person may respond by asserting that the person does not meet the definition of a larger participant of a market covered by this part within 45 days of the date of the communication. Such response must be sent to the Assistant Director by electronic transmission at the address included in the communication and must include an affidavit setting forth an explanation of the basis for the person's assertion that it does not meet the definition of larger participant of a market covered by this part and therefore is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514. In addition, a person may include with the response copies of any records, documents, or other information on which the person relied in making the assertion.

(b) A person shall be deemed to have waived the opportunity, at any time that it may dispute that it qualifies as a larger participant, to rely on any argument, records, documents, or other information that it fails to submit to the Assistant Director under paragraph (a) of this section. A person who fails to respond to the Bureau's written communication within 45 days will be deemed to have acknowledged that it is a larger participant.

(c) The Assistant Director shall review the affidavit, any attached records, documents, or other information submitted pursuant to paragraph (a) of this section, and any other information the Assistant Director deems relevant, and thereafter send by electronic transmission to the person a statement explaining whether the person meets the definition for a larger participant of a market covered by this part.

(d) At any time, including prior to issuing the written communication referred to in paragraph (a) of this section, the Assistant Director may require that a person provide to the Bureau such records, documents, and information as the Assistant Director may deem appropriate to assess whether a person qualifies as a larger participant. Persons must provide the requisite records, documents, and other information to the Bureau within the time period specified in the request.

(e) The Assistant Director, in her or his discretion, may modify any timeframe prescribed by this section on her or his own initiative or for good cause shown.

Subpart B—Markets

§ 1090.104 Consumer Reporting Market.

(a) *Market-Related definitions.*

Annual receipts means receipts calculated as follows:

(i) *Receipts* means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule C for sole proprietorships). Receipts do not include net capital gains or losses; taxes

collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the entity or its employees; and amounts collected for another (but fees earned in connection with such collections are receipts). Items such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes are included in receipts.

(ii) *Period of measurement.* (A) Annual receipts of a person that has been in business for three or more completed fiscal years means the total receipts of the person over its three most recently completed fiscal years divided by three.

(B) Annual receipts of a person that has been in business for less than three completed fiscal years means the total receipts of the person for the period the person has been in business divided by the number of weeks in business, multiplied by 52.

(C) Where a person has been in business for three or more completed fiscal years, but one of the years within its period of measurement is a short tax year, annual receipts means the total receipts for the short year and the two full fiscal or calendar years divided by the total number of weeks in the short year and the two full fiscal or calendar years, multiplied by 52.

(iii) *Annual receipts of affiliated companies.* (A) The annual receipts of a person are calculated by adding the annual receipts of the person with the annual receipts of each of its affiliated companies.

(B) If a person has acquired an affiliated company or been acquired by an affiliated company during the applicable period of measurement, the annual receipts of the person and the affiliated company are aggregated for the entire period of measurement (not just the period after the affiliation arose).

(C) Receipts are calculated separately for the person and each of its affiliated companies in accordance with paragraph (ii) of this definition even though this may result in using a different period of measurement to calculate an affiliated company's annual receipts. Thus, for example, if an affiliated company has been in business for a period of less than three years, the affiliated company's receipts are to be annualized in accordance with paragraph (ii)(B) of this definition even if the person has been in business for three or more completed fiscal years.

(D) The annual receipts of a formerly affiliated company are not included if affiliation ceased before the applicable period of measurement as set forth in paragraph (ii) of this definition. This exclusion of annual receipts of formerly affiliated companies applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

Consumer reporting means:

(i) *In general.* Consumer reporting means collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in any decision by another person regarding the offering or provision of any consumer financial product or service.

(ii) *Exclusion for transaction and experience information.* Consumer reporting does not include the activities of a person to the extent that a person collects, analyzes, maintains, or provides information that relates solely to the person's transactions or experiences with consumers.

(iii) *Exclusion for furnishing affiliate information to a consumer reporting entity.* Consumer reporting does not include the activities of a person to the extent that a person provides information that solely relates to transactions or experiences between a consumer and an affiliate of such person to another person that is engaged in consumer reporting.

(iv) *Exclusion for certain authorizations or approvals.* Consumer reporting does not include any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

(v) *Exclusion for providing information to be used solely in a decision regarding employment, government licensing, or residential leasing or tenancy.* Consumer reporting does not include the activities of a person to the extent that a person provides consumer report or other account information that is used or expected to be used solely regarding a decision for employment, government licensing, or a residential lease or tenancy involving a consumer, or to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service.

(b) *Test to define larger participants.* A nonbank covered person that offers or provides consumer reporting is a larger participant of the consumer reporting market if the person's annual receipts resulting from consumer reporting are more than $7 million.

Dated: July 13, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–17603 Filed 7–17–12; 4:15 pm]

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Part IV

Office of Personnel Management

5 CFR Parts 315, 550, 591, et al.
Same-Sex Domestic Partners: Noncompetitive Appointment of Certain Former Overseas Employees; Change in Definitions; Child Care Costs for Lower Income Employees; Presumption of Insurable Interest; Final Rules; Expanding Coverage of Children Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206–AM35

Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations to establish that an employee's same-sex domestic partner qualifies as a family member for purposes of eligibility for noncompetitive appointment based on overseas employment. The intended effect of this regulation is to ensure same-sex domestic partners are treated as family members.

DATES: This rule is effective August 20, 2012.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn, 202–606–0960, Fax: 202–606–2329 by TDD: 202–418–3134, or email: *michelle.glynn@opm.gov.*

SUPPLEMENTARY INFORMATION: On July 28, 2011, OPM published proposed regulations in the **Federal Register** at 76 FR 45204 to establish that an employee's same-sex domestic partner qualifies as, and should be treated as, a family member for purposes of eligibility for noncompetitive appointment based on overseas employment, as provided in § 315.608 of title 5, Code of Federal Regulations. This final rule makes the proposed changes in response to the Obama Administration's request, in Presidential Memoranda dated June 17, 2009, and June 2, 2010, that agencies consider extending benefits, where possible, to same-sex domestic partners, and OPM's determination to make benefits available to same-sex domestic partners, to the extent feasible, in this context. In particular, the rule is responsive to Section 1(a)(iii) of the Presidential Memorandum dated June 2, 2010, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' which requested OPM to ''issue a proposed rule that would clarify that employee's same-sex domestic partners qualify as 'family members' for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990.'' OPM received comments from 3 individuals on the proposed rule.

One individual commented that the eligibility for noncompetitive appointment should only be granted if the same-sex couple has entered into a legal marriage contract. OPM is not adopting this suggestion. Marriage is not an option for same-sex couples with respect to Federal benefits, because of the Defense of Marriage Act (''DOMA''), 1 U.S.C. 7. Even if DOMA were not an obstacle, same-sex couples are not permitted to marry in most states. Thus, if we were to extend this eligibility only to those who are able to enter into a legal marriage contract, we would be defeating the objective, which is to provide the same opportunity to same-sex partners of Federal employees that spouses enjoy.

One individual commented that the definition of ''domestic partner'' is too vague and would allow for casual relationships to be considered to be domestic partnerships for purposes of noncompetitive appointment eligibility. The commenter also suggested that domestic partners, in order to be covered, should be in a union recognized by a State or other legal body. OPM disagrees with these comments. OPM notes that the term ''domestic partner'' is defined at length in the regulation and specifies that the underlying domestic partnership must meet nine criteria, which are enumerated in the regulation. In connection with the Presidential Memoranda referenced above, OPM Director John Berry issued a June 2, 2010, Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' which provides standard definitions for agencies to use in undertaking changes to their existing regulations in response to the President's request. The definition adopted here includes a provision (described in § 315.608(e)(7)) which allows agencies to require same-sex domestic partners to certify their relationship is a committed one, rather than a casual one, for eligibility under this section. Therefore, the concern underlying this comment has already been addressed, and OPM does not plan to adopt the commenter's suggestion.

We have, however, revised the definition of domestic partner slightly by replacing the phrase ''employee or annuitant of the same sex'' with ''sponsor of the same sex.'' The original phrase was inaccurate and did not conform to paragraph (e)(2) of this section, entitled ''*Sponsor,''* which sets out the categories of Federal affiliation that can give rise creditable service for a family member. Pursuant to paragraph (e)(2), this provision covers family members of ''[a] Federal civilian employee, a Federal nonappropriated fund employee, or a member of a uniformed service who is officially assigned to an overseas area.'' By using the term ''sponsor,'' instead, we have incorporated this definition.

An agency commented that section (iv) of the definition of ''*domestic partnership,*'' which requires that the partners ''share responsibility for a significant measure of each other's financial obligations'' should be read to include relationships where one person works and the other does not. We agree. This criterion, which appears in this and in prior regulations promulgated in response to the President's June 2, 2010, Memorandum, is intended to require only that there be financial interdependence between the partners; it should not be interpreted to require the exclusion of partnerships in which one partner stays at home while the other is the primary breadwinner.''

One individual commented that this rule discriminates against family members who are not same-sex partners. OPM disagrees, noting that the definition of ''family member'' has simply been broadened to include a person in a domestic partnership with a sponsor of the same sex, but is otherwise unchanged. Spouses of sponsors (i.e., spouses of opposite sex, pursuant to DOMA) and unmarried children under age 23 will continue to be covered as before. OPM has declined to extend the definition of family member to the partner of an opposite-sex sponsor because opposite-sex couples may bring themselves within coverage by marrying. As discussed above, because of DOMA, marriage is not an option for same-sex couples wishing to obtain Federal benefits.

Executive Order 13563 and Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is amending 5 CFR part 315 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2560. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 2. In § 315.608, paragraph (e)(1) is revised and paragraphs (e)(6) and (7) are added to read as follows:

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(e) * * *

(1) *Family member.* An unmarried child under age 23, a spouse, or a domestic partner. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of noncompetitive appointment in the United States.

* * * * *

(6) *Domestic partner.* A person in a domestic partnership with a sponsor of the same sex.

(7) *Domestic partnership.* A committed relationship between two adults, of the same sex, in which the partners:

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency; and

(ix) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

* * * * *

[FR Doc. 2012–17536 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 591

RIN 3206–AM31

Change in Definitions; Evacuation Pay and the Separate Maintenance Allowance at Johnston Island

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is revising its regulations on evacuation pay and the separate maintenance allowance for duty at Johnston Island to ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have access to these benefits to the same extent as spouses of Federal employees and their children. These changes fulfill the Administration policy expressed in the President's June 2, 2010, memorandum on the ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees.''

DATES: This rule is effective August 20, 2012.

FOR FURTHER INFORMATION CONTACT: Kurt Springmann, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing final regulations on evacuation pay at 5 CFR part 550, subpart D, and the separate maintenance allowance for duty at Johnston Island at 5 CFR part 591, subpart D. These regulations ensure that same-sex domestic partners of Federal employees and the children of such domestic partners have the same access to these benefits as opposite-sex spouses of Federal employees and their children.

Background

On June 17, 2009, President Obama issued a memorandum regarding Federal benefits and non-discrimination that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees, consistent with underlying law. This memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The memorandum further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another memorandum, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. These regulations respond to two portions of the President's memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to (1) ''clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523''; and (2) ''clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.''

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding

Extension of Benefits to Same-Sex Domestic Partners of Federal Employees'' to help fulfill the Administration's policy. The memorandum provides definitions to help ensure its consistent application across the Federal Government. To ensure consistent application of the definition of *domestic partnership* found in this memorandum, OPM wants to clarify paragraph (4) of the definition that states that domestic partners ''share responsibility for a significant measure of each other's financial obligations.'' This provision provides only for the financial interdependence between partners and should not be interpreted to exclude partnerships in which one partner stays at home while the other is the primary financial breadwinner.

We are also clarifying paragraph (7) of the domestic partner definition that states that the domestic partners ''Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed.'' The intent of this language is to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarifying that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with treatment of opposite-sex marriages.

For the reasons outlined in the President's June 17, 2009, and June 2, 2010, memoranda, these regulations extend domestic partnership benefits only to same-sex couples, who are currently unable to obtain spousal benefits by entering a Federally-recognized marriage.

Executive Order 13563, *Improving Regulation and Regulatory Review,* sets out a series of requirements that must be followed, to the extent permitted by law, in issuing regulations. That Executive Order states that ''[w]here appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' Such values are relevant here. In particular, this regulation would protect human dignity, and promote equity and fairness by ensuring equal access to these benefits for LGBT Federal employees.

OPM published proposed regulations for public comment on July 28, 2011, at 76 FR 45205. The 60-day comment period for the proposed regulations ended on September 26, 2011. We received no comments in response the proposed regulations. As a result, we are adopting the proposed regulations as final.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is amending 5 CFR parts 550 and 591 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart D—Payments and Flexibilities During an Evacuation

■ 1. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963, p. 502.

■ 2. In § 550.402, the definition of ''dependent'' is revised and the definitions of ''domestic partner'', ''domestic partnership'', and ''family member'' are added to read as follows:

§ 550.402 Definitions.

* * * * *

Dependent means a family member of the employee residing with the employee and dependent on the employee for support.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, and children and parents thereof, including a domestic partner of any individual in paragraphs (2)–(5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart D—Separate Maintenance Allowance for Duty at Johnston Island

■ 3. The authority citation for subpart D of part 591 continues to read as follows:

Authority: 5 U.S.C. 5942a(b); E.O. 12822, 3 CFR, 1992 Comp., p. 325.

■ 4. In § 591.402, the definitions of ''domestic partner'' and ''domestic partnership'' are added, and the definition of ''family member'' is revised to read as follows:

§ 591.402 Definitions.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

(1) Children who are unmarried and under 21 years of age or who, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee, or of the employee's spouse or domestic partner, when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee, or of the employee's spouse or domestic partner, when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee, or of the employee's spouse or domestic partner, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support;

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance; or

(5) Domestic partner, excluding a domestic partner independently entitled to and receiving a similar allowance.

* * * * *

■ 5. In § 591.403, revise paragraph (a) to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee is determined by the number of individuals, including a spouse, a domestic partner, and/or one or more other family members, who are maintained at a location other than Johnston Island.

* * * * *

[FR Doc. 2012–17540 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–AL36

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is adopting as final changes to its regulations concerning alcohol and drug abuse counseling programs for employees and changes to its regulations concerning agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees. The changes would clarify the scope of regulations for alchohol and drug abuse programs for Federal civilian employees; change the definition of ''child''; expand regulations to extend coverage to child care services for children of same-sex domestic partners of Federal employees; make certain technical corrections; and make other changes designed to render the regulations clearer and more concise.

DATES: Effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, (202) 606–0416 or email *Ingrid.burford@opm.gov.*

SUPPLEMENTARY INFORMATION: On July 28, 2011, the U.S. Office of Personnel Management (OPM) published proposed regulations (76 FR 45208) revising part 792 of title 5, Code of Federal Regulations. This final rule makes changes in both subparts of that part, concerning employee assistance programs and child care subsidies for low-income employees, respectively, in response to the President's direction in Presidential Memoranda dated June 17, 2009 (Dailey Comp. Pres. Docs., 2010 DCPD No. 00450, p. 1.), and June 2, 2010, that agencies consider extending benefits, where possible, to same-sex domestic partners, and OPM's determination to make benefits available to same-sex domestic partners, to the extent feasible, in this context. The changes to subpart A also remove obsolete references to title 42 of the United States Code.

During the comment period, we received six comments in response to the proposed rule. Most of the comments supported the proposed changes. However, two commenters—an agency and an advocacy group—recommended that, for the purposes of the child care subsidy program, OPM revise the definition of ''domestic partner'' to include opposite-sex domestic partners as well as same-sex. The agency commented that the distinction OPM had drawn ''will limit agencies from providing an equitable policy to opposite-sex couples having legal documentation of their status as a domestic partner in a legal domestic partnership. It is [the agency's] position that employees in same-sex and opposite-sex domestic partnerships should be treated equally.'' The agency then provided examples of States and cities that recognize both kinds of partnerships.

The advocacy group observed that abandoning the distinction would ''further expand the number of lower-income employees who will be able to access these child care subsidies.'' It ''encourage[d] OPM to cover all qualified families, including unmarried opposite sex couples. * * *'' That commenter further stated that adopting the definition of ''domestic partner'' as stated in the current OPM regulations for annual, sick, and funeral leave would make the definitions consistent across OPM.

Although we considered these comments, we did not change our definition for the purposes of the child care subsidy program. OPM undertook to make this change because, currently, Federal employees are unable to use this benefit with respect to children of their same-sex domestic partners.

Opposite-sex couples may obtain these benefits by entering into marriage. This is not an option for same-sex couples with respect to Federal benefits, because of the defense of Marriage Act, 1 U.S.C. 7.

The same agency commenter questioned the inclusion of annuitants in the definition of a ''domestic partner,'' since annuitants are not eligible by law for the child care subsidy program. The commenter suggested we remove the reference to annuitants. We concur and have revised the regulations to remove the reference.

One agency highlighted concerns regarding the documentation that would be required for Federal agencies to verify the establishment of a domestic partnership and total family income requirements for eligibility for the child care subsidy program. Since this benefit became available by law, OPM has always given agencies authority to set their own thresholds, as well as requirements for what information to solicit from employees to qualify for the child care subsidy program. We provide guidance and sample documents agencies may require, but we do not regulate the specific types of acceptable documentation. Agency policies should require same-sex domestic partners to provide the same kinds of documentation they require married employees to provide.

The advocacy group referenced above expressed concerns that the definition of ''child'' may have the unintended consequence of restricting access to a child care subsidy because the child may belong to the non-earning parent, and not the Federal employee. It recommends that OPM adopt a definition of ''child'' used by the Department of Labor. Specifically, the commenter recommends including the following wording: ''* * * (6) A child for whom the employee, the employee's spouse, or the employee's domestic partner *stands in loco parentis.''* (A reference to standing *in loco parentis* would, in the advocacy group's view, include those with day-to-day responsibilities to care for or financially support a child, regardless of the existence of a biological or legal relationship.) An agency raised a similar comment. OPM believes the definition in the proposed rule is sufficient and will not restrict access in the manner suggested; it allows either the domestic partner or the employee to be the individual who make the contributions for the support of the child, and the child would still be considered eligible for the child care subsidy program in either event.

Background

On June 17, 2009, President Obama issued a Memorandum, entitled ''Federal Benefits and Non-Discrimination,'' that requested the Secretary of State and the Director of OPM, in consultation with the Department of Justice, to extend previously identified statutorily-based benefits that those agencies believed could be extended to qualified same-sex domestic partners of Federal employees consistent with underlying law. This Memorandum also directed the heads of executive departments and agencies, in consultation with OPM, to conduct a review of the benefits offered by their respective departments and agencies to determine whether they had the authority to extend such benefits to the same-sex domestic partners of Federal employees. The Memorandum further requested that OPM, in consultation with the Department of Justice, make recommendations regarding any additional measures that could be taken to provide benefits to the same-sex domestic partners of Federal Government employees, consistent with existing law.

On June 2, 2010, the President issued another Memorandum, entitled ''Extension of Benefits to Same-Sex Domestic Partners of Federal Employees,'' that published the results of the review and identified the benefits that could be extended to same-sex domestic partners and their families. We issued our proposed regulations in response to section 1(a)(i) and (ii) of the President's Memorandum, which identified additional benefits OPM had concluded it could offer and requested OPM to ''(i) clarify that the children of employees' same-sex domestic partners fall within the definition of 'child' for purposes of Federal child-care subsidies, and, where appropriate, for child-care services'' and ''(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as 'family members.'''

Also on June 2, 2010, OPM issued a Memorandum for the Heads of Executive Departments and Agencies, entitled ''Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees'' to help fulfill the Administration's policy. The Memorandum provides definitions to help agencies apply the President's Memorandum in the same way, to the extent consistent with applicable law.

Final Changes to the Regulations Concerning Drug and Alcohol Abuse Programs

The final rule will add a new provision in § 792.101 of title 5, Code of Federal Regulations, to clarify that an employee's domestic partner, and any children of the employee's domestic partner, are included within the employee's ''family'' for purposes of access to alcohol and drug abuse programs. These programs, for the most part, are already accessible by individuals whose personal relationship to the employee (including but not limited to the employee's domestic partner) is close enough to potentially affect the employee's performance on the job. Therefore, the addition of specific references to domestic partners and their children is a clarifying change to promote consistent implementation of this regulation across the Government.

For purposes of this regulation, we have chosen not to define ''domestic partner'' or ''domestic partnership.'' Agencies are already providing access to these programs to individuals who are close enough to the employee to potentially affect the employee's performance on the job. Our intent is to clarify that same-sex domestic partners meet this standard, but not to limit agency discretion to decide that other relationships, including opposite-sex domestic partnerships, also meet this standard.

Final Changes to the Child Care Subsidy Regulations

The final rule adopts changes to subpart B to clarify and consolidate regulations governing Federal agencies' use of appropriated funds to provide child care subsidies for lower-income civilian employees. The revision corrects the way the age limitation for covered children is expressed and

updates obsolete references and citations. The regulations currently provide that the subsidies may apply to child care for children from birth through age 13 and for disabled children through age 18. We amended this provision to state that the regulations apply to children under age 13 and disabled children under age 18. This change will help ensure that agency child care subsidy programs under part 792 conform to qualification rules used by the Internal Revenue Service for determining the tax treatment of dependent care assistance plans.

The final rule makes additional clarifying changes, including elimination of the question-and-answer format that currently appears in subpart B. We adopted a narrative format to consolidate and remove repetitive content and content that is not regulatory in nature. The changes also include certain corrections to definitions, such as removing the ''living with'' requirement from the definition of ''biological child'' and changing the defined term from ''child care contractor'' to ''child care provider,'' which is the term actually used in the regulation.

We added definitions of ''domestic partner'' and ''domestic partnership'' to subpart B. These definitions are based upon the OPM Memorandum described earlier in this Supplementary Information and have been used in other OPM regulations.

Paragraph (4) of the definition of ''domestic partnership'' requires that the partners ''share responsibility for a significant measure of each other's financial obligations.'' This criterion, which appears in this and in prior regulations promulgated in response to the President's June 2, 2010, Memorandum, is intended to require only that there be financial interdependence between the partners; it should not be interpreted to require the exclusion of partnerships in which one partner stays at home while the other is the primary breadwinner.

We have made a slight change to the wording of criterion (7). That criterion is intended to prohibit recognition of domestic partnerships between individuals who are related in a manner that would preclude them from marrying were they of opposite sexes. We are maintaining this criterion, but clarified that the determination is to be made at the time the domestic partnership is formed. It should not be re-examined if the couple relocates to a different jurisdiction. This approach is consistent with the treatment of opposite-sex marriages.

Unlike the change to the regulations involving drug and alcohol abuse programs discussed above, these regulations extend ''domestic partnership'' benefits only to same-sex couples who are currently unable to obtain spousal benefits by entering into a Federally recognized marriage. That is because child care subsidies are currently available only for expenses associated with the employee's children or children of the employee's spouse. Accordingly, it is appropriate to include the children of same-sex domestic partners in order to reflect the new policy to extend benefits to the same-sex domestic partners of Federal employees to the same extent such benefits are available to opposite-sex spouses, consistent with law.

The reference in paragraph (8) of the ''domestic partnership'' definition to documentation or proof of a dependent or family member relationship for purposes of eligibility for evacuation payments would be based on each agency's internal policies. Agencies have authority to request additional information in cases of suspected abuse or fraud, and they would continue to be able to exercise that authority under these proposed regulations. Agencies would be expected to apply the same standards for verification of requests for payments for all dependent and family member relationships, including domestic partners.

We are changing OPM's annual requirement to produce a report on agencies' use of the authority to pay child care subsidies, to a biannual requirement. OPM will continue, however, to collect annual data from Federal agencies on their child care subsidy programs.

Our proposed regulation proposed to add to the authority citation for part 792 by including the President's Memorandum of June 2, 2010. Upon further deliberation we concluded not to include that document in the authority citation, because the President's Memorandum is an expression of administration policy rather a source of positive authority, which actually derives from the statutes previously cited. We are proceeding with the change of the title of the part from ''Federal Employees' Health and Counseling Programs'' to ''Federal Employees' Health, Counseling, and Work/Life Programs'' so that it is broad enough to encompass the child care subsidy program.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 12866 and 13563.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 792 as follows:

PART 792—FEDERAL EMPLOYEES' HEALTH, COUNSELING, AND WORK/LIFE PROGRAMS

■ 1. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 7361–7363; Sec. 643, Pub. L. 106–58, 113 Stat. 477; 40 U.S.C. 590(g).

■ 2. The part 792 heading is revised to read as set forth above.

Subpart A—Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

■ 3. The heading for subpart A is revised to read as set fort above.

■ 4. Section 792.101 is revised to read as follows:

§ 792.101 Statutory requirements.

Sections 7361 and 7362 of title 5, United States Code, provide that the Office of Personnel Management is responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services and with other agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug abuse problems. To the extent feasible, agencies are encouraged to extend services to families (including domestic partners and their children) of alcohol and/or drug abusing employees and to employees who have family members (including domestic partners and their children) who have alcohol and/or drug problems. Such programs and services should make optimal use of existing Government facilities, services, and skills.

■ 5. Section 792.102 is revised to read as follows:

§ 792.102 General.

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug problems. Short-term counseling or referral, or offers thereof, constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and drug abuse required under subchapter VI of chapter 73 of title 5, United States Code. Federal agencies must establish programs to assist employees with these problems in accordance with that subchapter.

■ 6. In § 792.105, revise paragraph (b) to read as follows:

§ 792.105 Agency responsibilities.

* * * * *

(b) Agencies must issue internal instructions implementing the requirements of 5 U.S.C. 7361–7363 and this subpart.

* * * * *

■ 7. Subpart B is revised to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

Sec.

792.201 Purpose.
792.202 Definitions.
792.203 Child care subsidy programs; eligibility.
792.204 Agency responsibilities; reporting requirement.
792.205 Administration of child care subsidy programs.
792.206 Payment of subsidies.

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

§ 792.201 Purpose.

The purpose of this subpart is to implement section 590(g) of title 40, United States Code, which permits an Executive agency to use appropriated funds to improve the affordability of child care for lower-income employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 Definitions.

In this subpart—

Child means a child who bears any of the following relationships to an employee, the employee's spouse, or the employee's domestic partner:

(1) A biological child;

(2) An adopted child;

(3) A stepchild;

(4) A foster child;

(5) A child for whom a judicial determination of support has been obtained; or

(6) A child to whose support the employee, the employee's spouse, or the employee's domestic partner makes regular and substantial contributions.

Child care provider means an individual or entity providing child care services for which Federal employees' families are eligible. The provider must be licensed or regulated, and the provider's services can be provided in a Federally-sponsored child care center, a non-Federal center, or a family child care home.

Child care subsidy program means the program established by an agency in using appropriated funds, as provided in this subpart, to assist lower-income employees with child care costs. The program can include such activities as determining which employees receive a subsidy and the size of their subsidies; distributing agency funds to participating providers; and tracking and reporting information to OPM such as total cost and employee use of the program.

Disabled child means a child who is unable to care for himself or herself because of a physical or mental condition as determined by a physician or licensed or certified psychologist.

Domestic partner means a person in a domestic partnership with an employee of the same sex.

Domestic partnership means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to a contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Employee means an employee as defined in section 2105 of title 5, United States Code.

Executive agency means an Executive agency as defined in 5 U.S.C. 105 but does not include the Government Accountability Office.

Federally-sponsored child care center means a child care center located in a building or space that is owned or leased by the Federal Government.

OPM means the U.S. Office of Personnel Management.

§ 792.203 Child care subsidy programs; eligibility.

(a)(1) An Executive agency may establish a child care subsidy program in which the agency uses appropriated funds, in accordance with this subpart, to assist lower-income employees of the agency with their child care costs. The assistance may be provided for both full-time and part-time child care, and may include before-and-after-school programs and daytime summer programs.

(2) Two or more agencies may pool their funds to establish a child care subsidy program for the benefit of employees who are served by a Federally-sponsored child care center in a multi-tenant facility.

(3)(i) Except as provided under paragraph (a)(3)(ii) of this section, an agency may impose restrictions on the use of appropriated funds for its child care subsidy program based on consideration of employees' needs, its own staffing needs, the local availability of child care, and other factors as determined by the agency. For example, an agency may decide to restrict eligibility for subsidies to—

(A) Full-time permanent employees;

(B) Employees using an agency on-site child care center;

(C) Employees using full-time child care; or

(D) Employees using child care in specific locations.

(ii) An agency may not limit the payment of subsidies to accredited child care providers.

(b) Subject to any restrictions applicable under paragraph (a)(3)(i) of this section, an employee who qualifies as a lower-income employee under the agency's child care subsidy program is eligible to receive a child care subsidy for the care of each child under age 13 or, in the case of a disabled child, under age 18.

§ 792.204 Agency responsibilities; reporting requirement.

(a) Before funds may be obligated as provided in this subpart, an agency intending to initiate a child care subsidy program must provide notice to the Subcommittees on Financial Services and General Government of the House and Senate Appropriations Committees, as well as to OPM.

(b) Agencies must notify the committees referred to in paragraph (a) of this section and OPM annually of their intention to provide child care subsidies. Funds may be obligated immediately after the notifications have been made.

(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM in a manner prescribed by OPM.

(d) OPM will produce a biannual report on agencies' use of the authority to pay child care subsidies; however, OPM will collect annual data from the agencies.

§ 792.205 Administration of child care subsidy programs.

(a) An agency may administer its child care subsidy program directly or by contract with another entity, using procedures prescribed under the Federal Acquisition Regulations. Regardless of what entity administers the program, the Federal agency is responsible for establishing how eligibility and subsidy amounts will be determined.

(b) An agency contract must specify that any unexpended funds will be returned to the agency after the contract is completed.

§ 792.206 Payment of subsidies.

(a) Payment of child care subsidies must be made directly to child care providers, unless one of the following exceptions applies:

(1) In overseas locations, the agency may pay the employee if the provider deals only in foreign currency.

(2) In unique circumstances, an agency may obtain written permission from OPM to pay the employee directly.

(b) An agency may make advance payments to a child care provider in certain circumstances, such as when the provider requires payment up to one month in advance of rendering services. An agency may not make advance payments for more than one month before the employee receives child care services except where an agency has contracted with another entity to administer the child care subsidy program, in which case the agency may advance payments to the entity administering the program as long as the requirements in § 792.205(b) are met.

[FR Doc. 2012–17539 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AM20

Presumption of Insurable Interest for Same-Sex Domestic Partners

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations to add same-sex domestic partners to the class of persons for which an insurable interest is presumed to exist. The rule is designed to relieve federal employees with same-sex domestic partners from the evidentiary requirements in existing regulations for persons outside this class. Additionally, OPM is taking this step to recognize that individuals with same-sex domestic partners have the same presumption of an insurable interest in the continued life of employees or Members as the class of persons listed in the prior rule.

DATES: Effective July 20, 2012.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice or Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Pursuant to the President's June 2, 2010, Memorandum for the Heads of Executive Departments and Agencies on Extension of Benefits to Same-Sex Domestic Partners of Federal Employees, on Thursday, March 3, 2011, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** at 76 FR 11684 requesting comments concerning proposed changes to 5 CFR 831.613(e) and 5 CFR 842.605(e). The proposed rule added persons in same-sex domestic partnerships to the relationships listed as having a presumption of an insurable interest under 5 CFR 831.613(e)(1) and 842.605(e)(1).

An employee or Member of Congress (Member) in good health may elect a reduced annuity at retirement to provide for an insurable interest annuity for anyone who has an insurable interest in the continued life of the employee or Member. Although an employee or Member can elect an insurable interest annuity for anyone with an insurable interest in the employee's or Member's continued life, the insurable interest regulations at 5 CFR 831.613(e)(1) and 842.605(e)(1) lists certain relationships where an insurable interest is presumed to exist.

Under the rule, the list of presumed insurable interest relationships included ''spouses,'' ''former spouses,'' ''blood or adopted relatives closer than first cousins,'' ''common law spouses,'' or ''persons to whom employees or Members are engaged to be married.'' Prior to publication of this rule, a same-sex domestic partner of an employee or Member was not included in the list of relationships presumed to have an insurable interest in the continued life of the employee or Member. If an employee or Member elected an insurable interest annuity for a person who did not receive the presumption under 5 CFR 831.613(e)(1) and 5 CFR 842.605(e)(1), the employee or Member had to submit affidavits along with his or her election to prove that the designated individual had an insurable interest in the continued life of the employee or Member.

As explained in the proposed rule, this final rule adds ''same-sex domestic partners,'' ''former same-sex domestic partners,'' and ''persons with whom the employee or Member has agreed to enter into a same-sex domestic partnership'' to the class of persons OPM will presume has an insurable interest in the continued life of the employee or Member. Thus, when an employee or Member elects a domestic partner for an insurable interest annuity, he or she will no longer need to submit affidavits as evidence that the individual has an insurable interest in the employee or Member.

The term ''domestic partnership'' has the same meaning as that ascribed to it in the Memorandum issued by OPM Director Berry on June 2, 2010, to Heads of Executive Departments and Agencies concerning Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees. *See http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=2982*.

Comments

We received several comments regarding the proposed rule, and they are addressed below. For the most part,

OPM has not addressed comments it received that were aimed at substantive benefits and procedural issues outside the scope of the regulations. To the extent a comment recommended expanding or limiting the presumptive class, OPM has addressed those comments to clarify the intended scope of the rule.

One advocacy group commented that OPM should consider removing the requirement that domestic partners share the same residence. To meet the definition of ''domestic partnership'' a same-sex couple must show that they ''maintain a common residence and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle).'' The advocacy group acknowledged the proposed rule's exception to the residency requirement but noted that the exception ''is too narrow and likely discriminatory.''

The definition of ''domestic partnership'' contained in this regulation is drawn from guidance issued by OPM Director Berry on June 2, 2010, at the President's request, determining whether to extend particular benefits to same sex partners pursuant to the President's memorandum. *See http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=2982*. The guidance is intended to provide indicia that demonstrate a level of commitment in the relationship typically demonstrated by marriage. OPM has used a similar definition of a ''domestic partnership'' in its Absence and Leave as well as its Federal Long Term Care regulations, *see* 75 FR 33491 (June 14, 2010) (codified at 5 CFR 630.201) and 75 FR 30267 (June 1, 2010) (codified at 5 CFR 875.213), and OPM has tried to maintain consistency in this rule with the criteria necessary for proving the existence of a ''domestic partnership'' in the Absence and Leave and the FLTC regulations. Accordingly, we have determined not to adopt this suggestion.

Another advocacy group recommended that OPM consider expanding the existing presumption of a ''blood or adopted relative closer than first cousins'' to include children with whom an employee or Member acts *in loco parentis.* This comment, however, goes beyond the scope of the proposed rule, which was not published for the purpose of amending the relationships already included in the list of presumed insurable interest relationships. The existing list has already undergone public notice and comment.

Furthermore, the regulation is sufficient to protect the interest of those employees or Members who are in an *in loco parentis* relationship with a child. If an employee or Member wishes to elect a child who would not otherwise receive the presumption of an insurable interest under 5 CFR 831.613(e)(1) or 842.605(e)(1), the employee or Member may submit, along with the election, ''affidavits from one or more persons with personal knowledge of the named beneficiary's having an insurable interest in the employee or a Member.'' These affidavits must ''set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reason why the named beneficiary may expect to derive financial benefit from the continued life of the employee or Member.'' Thus, because employees and Members may elect children *in loco parentis* relationships with employees or Members under 5 CFR 831.613(e)(3) or 842.605(e)(3), their interests are sufficiently protected under this rule.

Several commenters suggested that same-sex couples who are legally married in jurisdictions that allow for same-sex marriage should be treated as ''spouses'' under 5 CFR 831.613(e)(1)(i) and 5 CFR 842.605(e)(1)(i), rather than as ''domestic partners'' as defined by this rule.

At this time, the Defense of Marriage Act, 1 U.S.C. 7, precludes us from adopting this suggestion. Same-sex couples in a state-recognized marriage, however, are likely to satisfy the definition of ''domestic partnership,'' and thus will be free to submit any relevant documentation for OPM's consideration that they think is appropriate to show that they satisfy the definition of a domestic partnership.

One commenter suggested that the requirements providing that ''domestic partners'' must be ''each other's sole domestic partner and intend to remain so indefinitely,'' and that ''domestic partners'' must ''share responsibility for a significant measure of each other's financial obligations'' in order to qualify for the presumption under the amended rule are unnecessary because none of the other listed classes under 5 CFR 831.613(e)(1) and 842.605(e)(1) are subject to similar requirements.

The commenter, however, appears to misunderstand the difference between the standards for insurable interest and the standards for establishing the existence of a domestic partnership. The requirements that domestic partners must be each other's sole domestic partner and intend to remain so indefinitely and that domestic partners must share responsibility for a significant measure of each other's financial obligations are about establishing the existence of a ''domestic partnership,'' which then entitles the partners to the presumption of an insurable interest. Moreover, as stated above, the standards for establishing a domestic partnership are drawn from government-wide guidance issued by Director Berry pursuant to the President's memorandum.

OPM received several comments expressing concern about the potential costs this rule would impose on the Federal Government. As a result, OPM believes it is necessary to clarify misconceptions some may have about the regulatory changes OPM has made to 5 CFR 864.613 and 842.605. The modifications to the pre-existing rule did not expand the class of persons whom employees or Members may elect for an insurable interest annuity, nor did the changes to the pre-existing rule alter who would bear the cost of providing the insurable interest annuity. The modification to the pre-existing rule merely included same-sex domestic partners in the class of persons that OPM will presume have an insurable interest in the continued life of the employee or Member. The cost of providing an insurable interest annuity continues to be borne primarily by the employee or Member. As a result, there is no significant cost increase, and OPM declines to change its decision to add same-sex domestic partners to the class of persons that OPM will presume have an insurable interest in the continued life of an employee or Member.

Similarly, OPM received a comment that suggested that the list of persons presumed to have an insurable interest is already too broad, and that OPM should exclude not only same-sex domestic partners from this presumption but also persons engaged to be married. This comment goes beyond the scope of the proposed rule, which was not published for the purpose of deleting any relationships already enumerated in the list of presumed insurable interest relationships. The existing list has already undergone public notice and comment. We also decline to make the suggested modification because the listed presumptions are consistent with the purpose of the law and OPM's longstanding administration of the insurable interest benefit.

Some commenters suggested that OPM provide retired individuals with a new opportunity to elect an insurable interest annuity for same-sex domestic partners as a result of the regulatory

change. OPM declines to adopt this suggestion. The law providing for the election of an insurable interest annuity expressly provides that an insurable interest election must be made at retirement. The change to the rule at 5 CFR 831.613(e)(2)(i) and 842.605(e)(2)(i) does not provide employees or Members with a new election opportunity they did not previously have under the pre-existing rule. The regulatory change merely modifies the evidentiary requirements employees or Members must meet to elect an insurable interest annuity for a same-sex domestic partner.

One commenter suggests that imposing the requirement that couples show proof of the existence of a ''same-sex domestic partner'' undermines OPM's stated purpose for publishing this rule—to relieve same-sex domestic partners of the evidentiary burdens imposed on individuals who do not fall within the presumptive classes. The commenter suggested that OPM has merely replaced one evidentiary burden imposed on same-sex domestic partnerships for another (i.e., the submission of affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member versus the submission of evidence that the designated beneficiary meets the definition of a ''same-sex domestic partner'' as defined by the rule).

OPM, however, has consistently required domestic partners to meet an evidentiary burden to establish that they are in a ''domestic partnership.'' That is because the relationship is not verifiable through government records (i.e., there is no marriage certificate) or, if such a certificate or record exist, OPM is unable to recognize same-sex marriages for purposes of establishing eligibility to federal benefits. This burden is the same for a host of other Federal benefits. Upon meeting the evidentiary burden to establish a domestic partnership with respect to any benefit, the domestic partners would then be relieved of the additional burden they would have to meet (absent the presumption) to qualify for an insurable interest annuity.

We also received several comments suggesting that opposite-sex domestic partners should be included in the class of persons for whom OPM will presume an insurable interest exists. We decline to adopt this suggestion because opposite-sex domestic partners have the option of getting married in order to obtain the presumption. This is not an option for same-sex couples with respect to Federal benefits.

Some commenters expressed concerns that the regulatory change would invite abuse or fraud. Some were concerned, for example, that there were insufficient safeguards to preclude individuals who were not in a ''domestic partnership'' as defined by the rule to be able to claim benefits they would not otherwise be entitled to receive.

OPM believes, however, that sufficient safeguards are in place to discourage individuals from fraudulently claiming the presumption as a domestic partner of an employee or Member. Section 831.613(viii) of the rule, for example, requires that parties are ''willing to certify, if required by OPM, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001.'' The provision under 18 U.S.C. 1001, provides that if an applicant intentionally makes false or misleading statements, certifications, or responses on government forms, he or she may be subject to a fine of not more than $10,000 or imprisonment of not more than five years.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired employees or Members who elect an insurable interest annuity for a person with whom they have entered into a domestic partnership or civil union.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

For the reasons discussed in the preamble, the Office of Personnel Management is amending 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

■ 2. In 831.613, revise paragraph (e) to read as follows:

§ 831.613 Election of insurable interest annuities.

* * * * *

(e) An insurable interest annuity may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) The current same-sex domestic partner;

(iii) A blood or adopted relative closer than first cousins;

(iv) A former spouse;

(v) A former same-sex domestic partner;

(vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;

(vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term ''same-sex domestic partner'' means a person in a domestic partnership with an employee or annuitant of the same sex and the term ''domestic partnership'' is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and

(viii) Are willing to certify, if required by OPM, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary evidence to establish the named beneficiary's date of birth.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

■ 4. In § 842.605, revise paragraph (e) to read as follows:

§ 842.605 Election of insurable interest rate.

* * * * *

(e) An insurable interest rate may be elected to provide a survivor benefit only for a person who has an insurable interest in the retiring employee or Member.

(1) An insurable interest is presumed to exist with—

(i) The current spouse;

(ii) The same-sex domestic partner;

(iii) A blood or adopted relative closer than first cousins;

(iv) A former spouse;

(v) A former same-sex domestic partner;

(vi) A person to whom the employee or Member is engaged to be married, or a person with whom the employee or Member has agreed to enter into a same-sex domestic partnership;

(vii) A person with whom the employee or Member is living in a relationship that would constitute a common-law marriage in jurisdictions recognizing common-law marriages;

(2) For purposes of this section, the term ''same-sex domestic partner'' means a person in a domestic partnership with an employee or annuitant of the same sex, and the term ''domestic partnership'' is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not the domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed; and

(viii) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, shall be determined by the agency.

(3) When an insurable interest is not presumed, the employee or Member must submit affidavits from one or more persons with personal knowledge of the named beneficiary's having an insurable interest in the employee or Member. The affidavits must set forth the relationship, if any, between the named beneficiary and the employee or Member, the extent to which the named beneficiary is dependent on the employee or Member, and the reasons why the named beneficiary might reasonably expect to derive financial benefit from the continued life of the employee or Member.

(4) The employee or Member may be required to submit documentary

evidence to establish the named beneficiary's date of birth.

* * * * *

[FR Doc. 2012–17542 Filed 7–19–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890, 892, 894

RIN 3206–AM55

Federal Employees Health Benefits Program and Federal Employees Dental and Vision Insurance Program: Expanding Coverage of Children Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits Program (FEHB) regulations regarding coverage for children up to age 26 and for children of the same-sex domestic partners of FEHB enrollees. The regulations also allow children of same-sex domestic partners to be covered family members under the Federal Employees Dental and Vision Insurance Program (FEDVIP).

DATES: OPM must receive comments on or before September 18, 2012.

ADDRESSES: Send written comments to Marguerite Martel, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 3415, 1900 E Street NW., Washington, DC; or fax to (202) 606–4640 Attn: Marguerite Martel. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Marguerite Martel; at *Marguerite.Martel@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to (1) Bring FEHB rules into compliance with changes to health insurance coverage for children under the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act); (2) extend FEHB and FEDVIP benefits to children of same-sex domestic partners of Federal employees consistent with Presidential Memoranda issued on June 17, 2009 and June 2, 2010; (3) make other non-substantive, technical conforming amendments to the Federal Employees Dental and Vision Program (FEDVIP) rules, which reference current FEHB rules that would be amended by this proposed rule; and (4) update the Federal Flexible Benefits Plan: Pre-Tax Payment of Health Benefits Premiums (Part 892) rules to reflect the above-referenced changes required by the Affordable Care Act and to implement changes in connection with the extension of FEHB coverage to children of same-sex domestic partners of Federal employees.

Section 2714(a) of the Public Health Service Act, which was added by section 1001 of the Affordable Care Act, requires group health plans and health insurance issuers offering group or individual health insurance coverage that provides dependent coverage of children to ''continue to make such coverage available for an adult child until the child turns 26 years of age.'' Pursuant to this law, OPM issued guidance to FEHB carriers in Carrier Letter No. 2010–18 and to agency benefit officers in Benefits Administration Letter No. 10–201. In these guidance documents, OPM explained that the Affordable Care Act and its implementing regulations allow married children to be covered; remove dependency requirements; remove residency requirements; and do not require a child to be a student or to have prior or current insurance coverage in order to be placed on their parent's enrollment under the FEHB Program. This proposed rule updates FEHB regulations to align with current program policy by extending coverage to children up to 26 years of age, regardless of their marital status, dependency, residency, student status, or lack of insurance coverage with limited exceptions permitted under guidance issued under the Affordable Care Act. This proposed rule also updates Part 892 to reflect coverage of children up to age 26 as described above.

The rule also makes technical conforming changes to FEDVIP regulations, which reference current FEHB rules that are affected by this proposed rule. The changes required by the Affordable Care Act do not apply to FEDVIP as stand-alone dental and vision insurance, and therefore this regulation does not extend coverage of children to age 26 or eliminate dependency and residency restrictions under FEDVIP.

The rule also clarifies and updates FEHB rules governing dual enrollments. These changes are not meant to affect the substance of current rules prohibiting dual enrollments, but rather to clarify and update the rules in light of the Affordable Care Act's elimination of residency and dependency restrictions for children.

The proposed rule also would extend FEHB and FEDVIP eligibility to the children of an enrollee's same-sex domestic partner. This change is being proposed to implement President Obama's memoranda on domestic partner benefits. On June 17, 2009, President Obama issued the Presidential Memorandum on Federal Benefits and Non-Discrimination requesting that the Director of OPM extend certain benefits to qualified same-sex domestic partners of Federal employees. OPM then determined that it could expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP) to same-sex domestic partners of Federal employees and annuitants, and issued published regulations (75 FR 30267–30268) to do so.

That memorandum also requested that heads of executive departments and agencies conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees, annuitants and their families. The results of that review were reported to the Director of OPM, who, in consultation with the United States Department of Justice, made recommendations to the President to provide benefits to the same-sex domestic partners of Federal Government employees. Subsequently, President Obama issued a Presidential Memorandum on June 2, 2010 requesting agencies to implement the recommended regulatory and administrative actions expanding benefits for same-sex domestic partners of Federal employees and their families.

Executive Order 13563, *Improving Regulation and Regulatory Review,* sets out a series of requirements that must be followed, to the extent permitted by law, in issuing regulations. That Executive Order states that ''[w]here appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' Such values are relevant here. In particular, this regulation would protect human dignity, and promote equity and fairness by ensuring equal access to these benefits for LGBT Federal employees.

Since OPM made its recommendations to the President, the Agency has determined that coverage under the FEHB and FEDVIP Programs may be extended to children of the same-sex domestic partners of Federal employees and annuitants through a regulation defining the term ''stepchild''

as that term is used in 5 U.S.C. 8901 and cross-referenced in 5 U.S.C. 8951 and 5 U.S.C. 8981. This regulatory action is necessary to implement fully the Presidential Memoranda cited above and is consistent with OPM's policy determination that extension of coverage is appropriate. Accordingly, this proposed rule extends FEHB and FEDVIP coverage to children of same-sex domestic partners of enrolled employees and annuitants.

The rule adds a definition of ''stepchild'' to Parts 890 and 894 to denote the child of an enrollee's spouse or same-sex domestic partner. In order to maintain consistency across the Federal benefits programs, the definitions of domestic partner and domestic partnership mirror those found at 5 CFR 875.213 governing the FLTCIP.

The rule would amend FEHB regulations to provide that if the enrollee does not establish that the child of an enrollee's same-sex domestic partner qualifies for favorable tax treatment under applicable tax laws, then the enrollee will be taxed on the fair market value of any FEHB coverage provided to the child. The rule would also amend Parts 892 and 894 to provide that income will be separately imputed to the enrollee in the amount of that portion of the amount allotted for pre-tax treatment that is attributable to coverage of the child of an enrollee's same sex domestic partner where the enrollee has not established that the child is entitled to favorable tax treatment under applicable tax laws and that such income will be taxed accordingly.

This proposed rule also amends Part 892 rules to provide that for purposes of determining whether a qualifying life event has occurred, the child of an employee's same-sex domestic partner as described in Part 890 will be treated as being covered by the qualifying life event rules set forth in Treasury Regulations at 26 CFR 1.125–4 even if the child is not covered by such rules by virtue of not being a dependent under the Internal Revenue Code. This would permit an employee receiving premium conversion to make mid-plan year FEHB enrollment and Part 892 election changes in connection with events related to the child of a same-sex domestic partner who does not qualify as a dependent under the Internal Revenue Code under the same terms and conditions as children covered by such rules. For instance, an employee receiving premium conversion under a FEHB self and family enrollment covering only the employee and the child of a same-sex domestic partner who did not qualify as a dependent under the Internal Revenue Code would be able to switch from a self and family enrollment to a self only enrollment during a plan year if the child reached age 26 during the year.

In addition to generally seeking comments on this proposed rule, we are specifically soliciting comments on how, in the case of the provision of FEHB coverage to the child of a same-sex domestic partner who does not qualify for favorable tax treatment under the Internal Revenue Code, the fair market value of that coverage might be calculated for different types of plan coverage, including, for example, a high deductible health plan with a health reimbursement arrangement.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds additional groups to the list of groups eligible for coverage under FEHB.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 892

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

5 CFR Part 894

Administrative practice and procedure, Government employees, Health insurance, Taxes, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under Sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under Sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. Section 890.302 is revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) An enrollment for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraph (a)(2) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is covered under another person's self and family enrollment in the FEHB Program.

(2) *Dual enrollment.* A dual enrollment exists when an individual is covered under more than one FEHB Program enrollment. Dual enrollments are prohibited except when an eligible individual would otherwise not have access to coverage and the dual enrollment has been authorized by the employing office.

(i) An individual who is a covered family member under the self and family enrollment of another FEHB enrollee may not enroll in his or her own right, even though otherwise eligible to enroll.

(ii) *Exception.* An individual described in paragraph (a)(2)(i) of this section may enroll if he or she or his or her eligible family members would otherwise not have access to coverage, in which case the individual may enroll in his or her own right for self only or self and family coverage, as appropriate. However, an eligible individual is entitled to receive benefits under only one enrollment regardless of whether he or she qualifies as a family member under a spouse's or parent's enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which persons will be covered under his or her enrollment. These individuals are not covered under the other

enrollment. Examples include but are not limited to:

(A) To protect the interests of married or legally separated Federal employees, annuitants and their children, an employee or annuitant may enroll in his or her own right in a self only or self and family enrollment, as appropriate, even though his or her spouse also has a self and family enrollment if the employee, annuitant or his or her children live apart from the spouse and would otherwise not have access to coverage due to a service area restriction and the spouse refuses to change health plans.

(B) When an employee who is under age 26 and covered under a parent's self and family enrollment acquires an eligible family member, the employee may elect to enroll for self and family coverage.

(iii) Children are entitled to receive benefits under only one enrollment regardless of whether the children qualify as family members under the enrollment of both parents or of a parent and a stepparent and regardless of whether the parents are married, unmarried, divorced, legally separated, or in a domestic partnership. To ensure that no person receives benefits under more than one enrollment, each enrollee must promptly notify the insurance carrier as to which family members will be covered under his or her enrollment. These individuals are not covered under the other enrollment.

(b)(1) A child is considered to be a family member eligible to be covered by the enrollment of an enrolled employee or annuitant or a former employee or child enrolled under § 890.1103 of this part if he or she is—

(i) A child born within marriage;

(ii) A recognized natural child;

(iii) An adopted child;

(iv) A stepchild; or

(v) A foster child who lives with the enrollee in a regular parent-child relationship.

(2) *Meaning of stepchild.* For purposes of this part, the term ''stepchild'' refers to the child of an enrollee's spouse or domestic partner.

(3) *Meaning of domestic partner.* For purposes of this part, the term ''domestic partner'' is a person in a domestic partnership with an employee, annuitant, former employee or child enrolled under § 890.1103 of this part.

(4) *Meaning of domestic partnership.* For purposes of this part, the term ''domestic partnership'' is defined as a committed relationship between two adults, of the same sex, in which the partners—

(i) Are each other's sole domestic partner and intend to remain so indefinitely;

(ii) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(iii) Are at least 18 years of age and mentally competent to consent to a contract;

(iv) Share responsibility for a significant measure of each other's financial obligations;

(v) Are not married or joined in a civil union to anyone else;

(vi) Are not a domestic partner of anyone else;

(vii) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(viii) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM; and

(ix) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(5) *Termination of Domestic Partnership.* An enrollee must notify the employing office within seven calendar days in the event that any of the conditions listed in (i) through (vii) of this subsection are no longer met, in which case a domestic partnership will be deemed terminated.

(6) *Tax Issues.* The fair market value of coverage provided to a stepchild who is the child of a domestic partner will be taxed in accordance with applicable tax laws unless the enrollee establishes that the stepchild qualifies for favorable tax treatment in accordance with guidance issued by OPM.

(c) *Child incapable of self-support.* When an individual's enrollment for self and family includes a child who has become 26 years of age and is incapable of self-support, the employing office must require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

(1) State that the child is incapable of self-support because of a physical or mental disability that existed before the child became 26 years of age and that can be expected to continue for more than 1 year;

(2) Include a statement of the name of the child, the nature of the disability, the period of time it has existed, and its probable future course and duration; and,

(3) Be signed by the physician and show the physician's office address. The employing office must require the enrollee to submit the certificate on or before the date the child becomes 26 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity that is not timely filed.

(d) *Renewal of certificates of incapacity.* The employing office must require an enrollee who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

(e) *Determination of incapacity.* (1) Except as provided in paragraph (e)(2) of this section, the employing office shall make determinations of incapacity.

(2) Either the employing office or the carrier may make a determination of incapacity if a medical condition, as specified by OPM, exists that would cause a child to be incapable of self-support during adulthood.

3. Section 890.804 is revised to read as follows:

§ 890.804 Coverage.

(a) *Type of enrollment.* A former spouse who meets the requirements of § 890.803 may elect coverage for self alone or for self and family. A family enrollment covers only the former spouse and any child of both the former spouse and the employee, former employee or employee annuitant, provided such child is not otherwise covered by a health plan under this part. A child must be under age 26 or incapable of self-support because of a mental or physical disability existing before age 26. No person may be covered by two enrollments.

(b) *Child.* A child is considered to be the child of the former spouse or the employee, former employee, or employee annuitant if he or she is—

(i) A child born within marriage or

(ii) An adopted child.

(c) *Child incapable of self-support.* When a former spouse enrolls for a family enrollment which includes a child who has become 26 years of age and is incapable of self-support, the employing office shall determine such child's eligibility in accordance with § 890.302(c), (d), and (e).

4. In § 890.1102, revise the definition of ''Qualifying event'' to read as follows:

§ 890.1102 Definitions.

* * * * *

Qualifying event means any of the following events that qualify an individual for temporary continuation of coverage under subpart K of this part:

(1) A separation from Government service.

(2) A divorce or annulment.

(3) A change in circumstances that causes an individual to become ineligible to be considered a child who is a covered family member under this part.

* * * * *

5. In § 890.1103, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 890.1103 Eligibility.

(a) Except as provided by paragraph (b) of this section, individuals described by this section are eligible to elect temporary continuation of coverage under this subpart. Eligible individuals are as follows:

* * * * *

(2) Individuals whose coverage as children under the family enrollment of an employee, former employee, or annuitant ends because they cease meeting the requirements for being considered covered family members. For the purpose of this section, children who are enrolled under this part as survivors of deceased employees or annuitants are considered to be children under a family enrollment of an employee or annuitant at the time of the qualifying event.

* * * * *

6. In § 890.1104, revise paragraphs (b)(2) and (3) to read as follows:

§ 890.1104 Notification by agency.

* * * * *

(b) * * *

(2) If the notice described in paragraph (b)(1) of this section is received by the employing office within 60 days after the date on which the child ceased meeting the requirements for being considered a covered family member, the employing office must notify the child of his or her rights under this subpart within 14 days after receiving the notice.

(3) This paragraph does not preclude the employing office from notifying the child of his or her rights based on oral or written notification by the child, another family member, or any other source that the child no longer meets the requirements for being considered a covered family member.

* * * * *

5. In § 890.1107, revise paragraphs (b)(1) and (2) to read as follows:

§ 890.1107 Length of temporary continuation of coverage.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, in the case of individuals who are eligible for continued coverage under § 890.1103(a)(2) of this part, the temporary continuation of coverage ends on the date that is 36 months after the date the individual first ceases to meet the requirements for being considered a child who is a covered family member, unless it is terminated earlier under the provisions of § 890.1110.

(2) The temporary continuation of coverage ends on the date that is 36 months after the date of the separation from service on which the former employee's continuation of coverage is based, unless it is terminated earlier under the provisions of § 890.1110, in the case of individuals who—

(i) Are eligible for continued coverage under § 890.1103(a)(2); and

(ii) As of the day before ceasing to meet the requirements for being considered children who are covered family members, were covered family members of a former employee receiving continued coverage under this subpart; and

(iii) Cease meeting the requirements for being considered children who are covered family members before the end of the 18-month period specified in paragraph (a) of this section.

* * * * *

§ 890.1202 [Amended]

6. In § 890.1202, remove the words ''unmarried'' and ''dependent'' from the definition of ''covered family members''.

§ 890.1203 [Amended]

7. In § 890.1203, in paragraph (b), remove the word ''dependent'' each time it appears.

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENTS OF HEALTH BENEFITS PREMIUMS PROGRAM

8. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125; Sec. 892.101 also issued under sec. 311 of Pub. L. 111–3, 123 Stat. 64.

9. In § 892.101, the definition of ''Dependent'' and the introductory text and paragraph (1)(iii) of the definition of ''Qualifying life event'' are revised to read as follows:

§ 892.101 Definitions.

* * * * *

Dependent means a family member who is both eligible for coverage under the FEHB Program and either a dependent as defined in section 152 of the Internal Revenue Code or a child as defined in section 152(f)(1) of the Internal Revenue Code who is under age 27 as of the end of the employee's taxable year.

* * * * *

Qualifying life event means an event that may permit changes to your FEHB enrollment as well as changes to your premium conversion election as described in Treasury regulations at 26 CFR 1.125–4. For purposes of determining whether a qualifying life event has occurred under this part, a stepchild who is the child of an employee's domestic partner as defined in Part 890 shall be treated as though the child were a dependent within the meaning of 26 CFR 1.125–4 even if the child does not so qualify under such Treasury regulations. Such events include the following:

* * * * *

(iii) Last dependent child loses coverage, for example, the child reaches age 26, disabled child becomes capable of self support, child acquires other coverage by court order; and

* * * * *

10. In § 892.102, add two sentences to the end of the section to read as follows:

§ 892.102 What is premium conversion and how does it work?

* * * There is one exception, however. If your FEHB enrollment covers a stepchild who is the child of a domestic partner as defined in part 890 of this chapter, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, then the portion of the allotted amount described above that represents the employee's contribution toward the fair market value of FEHB coverage provided to the child will be separately imputed to the employee as income and subject to applicable taxes.

§ 892.208 [Amended]

11. In § 892.208(b), the number ''22'' is removed and the number ''26'' is added in its place.

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

12. The authority citation for part 894 continues to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Pub. L. 110–279, 122 Stat. 2604.

13. In § 894.101, the definition of ''Acquiring an eligible child'' is revised and definitions for ''Domestic partner,'' ''Domestic partnership,'' and ''Stepchild'' are added to read as follows:

§ 894.101 Definitions.

* * * * *

Acquiring an eligible child means one of the following:

(1) Birth of a child;

(2) Adoption of a child;

(3) Acquisition of a foster child as described in § 890.101(a)(8) of this chapter;

(4) Acquisition of a stepchild who lives with the enrollee in a regular parent-child relationship;

(5) Establishment of a recognized natural child;

(6) Residence change of the enrollee's stepchild or recognized natural child who moves in with the enrollee; and

(7) An otherwise eligible child becoming unmarried due to divorce or annulment of marriage, or death.

* * * * *

Domestic partner means a person in a domestic partnership with an employee or annuitant.

Domestic partnership means a committed relationship between two adults, of the same sex, in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to a contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not a domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Provide documentation demonstrating fulfillment of the requirements of (i) through (vii) as prescribed by OPM; and

(9) Certify that they understand that willful falsification of the documentation described in subparagraph (viii) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under 18 U.S.C. 1001.

(10) Termination of Domestic Partnership. An enrollee must notify the employing office within seven calendar days in the event that any of the conditions listed in paragraphs (1) through (7) of this definition are no longer met, in which case a domestic partnership will be deemed terminated.

* * * * *

Stepchild means the child of an enrollee's spouse or domestic partner.

* * * * *

14. Add § 894.308 to subpart C to read as follows:

§ 894.308 How do I establish the dependency of my recognized natural child?

(a) Dependency is established for a recognized natural child who lives with the enrollee in a regular parent-child relationship, a recognized natural child for whom a judicial determination of support has been obtained, or a recognized natural child to whose support the enrollee makes regular and substantial contributions.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support of a recognized natural child who does not live with the enrollee in a regular parent-child relationship and for whom a judicial determination of support has not been obtained:

(1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(2) Proof of inclusion of the child as a dependent on the enrollee's income tax returns;

(3) Canceled checks, money orders, or receipts for periodic payments from the enrollee for or on behalf of the child.

(4) Evidence of goods or services which show regular and substantial contributions of considerable value;

(5) Any other evidence which OPM shall find to be sufficient proof of support or of paternity or maternity.

15. In § 894.403, add a sentence to the end of paragraph (a) to read as follows:

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) * * * However, if your enrollment covers a stepchild who is the child of a domestic partner as defined in § 894.101, and that stepchild does not qualify for favorable tax treatment under applicable tax laws, the allotted amount of premium that represents the fair market value of the FEDVIP coverage provided to the stepchild will be separately imputed to the employee as income and subject to applicable taxes.

* * * * *

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2012–0005; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AX97

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2012–13 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This proposed rule also provides the final regulatory alternatives for the 2012–13 duck hunting seasons.

DATES: *Comments:* You must submit comments on the proposed early-season frameworks by July 30, 2012.

Meetings: The Service Migratory Bird Regulations Committee (SRC) will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2013 spring/summer migratory bird subsistence seasons in Alaska on July 25 and 26, 2012. All meetings will commence at approximately 8:30 a.m.

ADDRESSES:

Comments: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2012–0005.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2012–0005, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Meetings: The SRC will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2012

On April 17, 2012, we published in the **Federal Register** (77 FR 23094) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2012–13 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 17 proposed rule.

Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Those headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Youth Hunt
   - x. Mallard Management Units
   - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-Fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-Tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

On May 17, 2012, we published in the **Federal Register** (77 FR 29516) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The May 17 supplement also provided detailed information on the 2012–13 regulatory schedule and announced the SRC and Flyway Council meetings.

On June 12, 2012, we published in the **Federal Register** (77 FR 34931) a third document revising our previously announced dates of the June 2012 SRC meetings.

This document, the fourth in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations and the regulatory alternatives for the 2012–13 duck hunting seasons. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2012–13 season.

We have considered all pertinent comments received through June 22, 2012, on the April 17 and May 17, 2012, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 16, 2012.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 19–20, 2012, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2012–13 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed

preliminary information on the status of waterfowl.

Participants at the previously announced July 25–26, 2012, meetings will review information on the current status of waterfowl and develop recommendations for the 2012–13 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit comments on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2012 Waterfowl Breeding Population and Habitat Survey were characterized by average to below-average moisture, a mild winter, and an early spring across the southern portion of the traditional and eastern survey areas. Northern habitats of the traditional and eastern surveys areas generally received average moisture and temperatures. The total pond estimate (Prairie Canada and U.S. combined) was 5.5 ± 0.2 million. This was 32 percent below the 2011 estimate of 8.1 ± 0.2 million ponds, and 9 percent above the long-term average of 5.1 ± 0.03 million ponds.

Traditional Survey Area (U.S. and Canadian Prairies and Parklands)

Conditions across the Canadian prairies declined relative to 2011. Residual moisture from prior years benefitted more permanent wetlands of the coteau in Saskatchewan and near the Saskatchewan and Manitoba border, but temporary wetlands retained little moisture owing to a shallow frost seal and below-average precipitation. The 2012 estimate of ponds in Prairie Canada was 3.9 ± 0.1 million. This was 21 percent below last year's estimate (4.9 ± 0.2 million) and 13 percent above the 1961–2011 average (3.4 ± 0.03 million). Much of the parkland was classified as good; however, habitat conditions declined westward toward Alberta. Following the completion of the survey, the Canadian prairies received above-average precipitation, which may improve habitat conditions for late-nesting waterfowl, re-nesting attempts and brood rearing.

Significant declines in wetland numbers and conditions occurred in the U.S. prairies during 2012. The 2012 pond estimate for the north-central U.S. was 1.7 ± 0.1 million, which was 49 percent below last year's estimate (3.2 ± 0.1 million) and similar to the 1974–2011 average. Nearly all of the north-central U.S. was rated as good to excellent in 2011; however, only the coteau of North and South Dakota was rated as good in 2012, and no areas were rated as excellent this year. Drastic wetland declines in western South Dakota and Montana resulted in mostly poor to fair habitat conditions.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the bush regions of the traditional survey area (Alaska, Yukon, Northwest Territories, northern Alberta, northern Manitoba, northern Saskatchewan, and western Ontario), spring breakup was slightly early in 2012. Average to above-average annual precipitation over much of the bush and ice-free habitats benefitted arriving waterfowl. Drier conditions were observed in northern Alberta and Saskatchewan and habitat was classified as fair. A similar trend was noted in western Ontario where habitat conditions declined from excellent in 2011 to good in 2012.

Eastern Survey Area

Most of the eastern survey area had mild winter temperatures with below-average precipitation, although northern survey areas in Labrador, Newfoundland and eastern Quebec experienced more normal conditions, with some areas receiving heavy snowfall. While habitat quality declined overall relative to 2011, good conditions persisted over the majority of the eastern survey area. Exceptions were northwestern Quebec, northern Maine, and New Brunswick, where, despite an early spring, inadequate precipitation caused wetland conditions to deteriorate.

Status of Teal

The estimate of blue-winged teal from the traditional survey area is 9.2 million. This record-high count represents a 3.3 percent increase from 2011, and is 91 percent above the 1955–2011 average.

Sandhill Cranes

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The spring 2012 index for sandhill cranes in the Central Platte River Valley, Nebraska, uncorrected for visibility bias, was 259,576 birds, which was significantly lower than the previous 5 years. However, surveys in areas south and north of Nebraska indicated that cranes migrated out of southern areas and Nebraska much earlier than normal due to mild weather and lack of snow cover, so many birds had already left the Central Platte River Valley for northern nesting areas by the time of the survey. Thus, most of the decline is likely not due to a population decrease, but rather due to the survey being conducted too late relative to the migration of the cranes this year. The photo-corrected, 3-year average for 2009–11 was 579,863, which is above the established population-objective range of 349,000–472,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2011–12. An estimated 7,836 hunters participated in these seasons, which was 11 percent lower than the number that participated in the previous season. Hunters harvested 14,442 MCP cranes in the U.S. portion of the Central Flyway during the 2011–12 seasons, which was 23 percent lower than the harvest for the previous year and 1 percent lower than the long-term average. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Minnesota, Alaska, Canada, and Mexico combined) was 13,205 during 2011–12. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 31,354 birds,

which was a 13 percent decrease from the previous year's estimate. The long-term (1982–2008) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2011 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 17,494 cranes. The 3-year average was 19,626 sandhill cranes, which is within the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2011–12 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a harvest of 1,262 RMP cranes, a 6 percent decrease from the previous year's harvest.

The Lower Colorado River Valley Population (LCRVP) survey results indicate a slight increase from 2,415 birds in 2011, to 2,646 birds in 2012. The 3-year average is 2,442 LCRVP cranes, which is below the population objective of 2,500.

The Eastern Population (EP) has rebounded from near extirpation in the late 1800s to over 30,000 cranes by 1996. As a result of this rebound and their range expansion, the Atlantic and Mississippi Flyway Councils developed a cooperative management plan for this population, and criteria have been developed describing when hunting seasons can be opened. Kentucky held its first hunting season on this population in 2011–12 and harvested 50 cranes.

Woodcock

Singing-ground and Wing-collection surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2012 indicate that the numbers of singing male woodcock per route in the Eastern and Central Management Regions were unchanged from 2011. There were no significant 10-year trends in woodcock heard in the Eastern or Central Management Regions during 2002–12, which marks the ninth consecutive year that the 10-year trend estimate for the Eastern Region was stable and the second year that the 10-year trend was stable in the Central Region. Both management regions have a long-term (1968–2012) declining trend of −0.8 percent per year.

The Wing-collection Survey provides an index to recruitment. Wing-collection Survey data indicate that the 2011 recruitment index for the U.S. portion of the Eastern Region (1.68 immatures per adult female) was 13.7 percent greater than the 2010 index, and 2.5 percent greater than the long-term (1963–2010) average. The recruitment index for the U.S. portion of the Central Region (1.53 immatures per adult female) was one percent less than the 2010 index and 2.6 percent below the long-term (1963–2010) average.

Band-Tailed Pigeons

Two subspecies of band-tailed pigeon occur north of Mexico, and they are managed as two separate populations in the United States: The Interior Population and the Pacific Coast Population. Information on the abundance and harvest of band-tailed pigeons is collected annually in the United States and British Columbia. Abundance information comes from the Breeding Bird Survey (BBS) and, for the Pacific Coast Population, the BBS and the Mineral Site Survey (MSS). Harvest and hunter participation are estimated from the Migratory Bird Harvest Information Program. The BBS provided evidence that the abundance of Pacific Coast band-tailed pigeons decreased (−2.1 percent per year) over the long term (1968–2011). Trends in abundance during the recent 10- and 5-year periods were inconclusive. The MSS, however, provided some evidence that abundance decreased during the recent 8- (−4.7 percent per year) and 5-year (−4.0 percent per year) periods, but results were inconclusive. An estimated 4,900 hunters harvested 11,900 birds in 2011.

For Interior band-tailed pigeons, the BBS provided evidence that abundance decreased (−5.3 percent per year) over the long term (1968–2011). Trends in abundance during the recent 10- and 5-year periods were inconclusive. An estimated 1,200 hunters harvested 1,800 birds in 2011.

Mourning Doves

The Mourning Dove Call-count Survey (CCS) data is analyzed within a Bayesian hierarchical modeling framework, consistent with analysis methods for other long-term point count surveys such as the American Woodcock Singing-ground Survey and the North American Breeding Bird Survey. According to the analysis of the CCS, there was no trend in counts of mourning doves heard over the most recent 10 years (2003–12) in the Eastern Management Unit. There was a negative trend in mourning doves heard for the Central and Western Management Units. Over the 47-year period, 1966–2012, the number of mourning doves heard per route decreased in all three dove management units. The number of doves seen per route was also collected during the CCS. For the past 10 years, there was no trend in doves seen for the Central and Western Management Units; however, there was evidence of a positive trend in the Eastern Management Unit. Over 47 years, there was of a positive trend in doves seen in the Eastern Management Unit, and negative trends were indicated for the Central and Western Management Units. The preliminary 2011 harvest estimate for the United States was 16,580,900 mourning doves.

A simple Lincoln-type estimator was used to estimate absolute abundance of mourning doves in each Management Unit based on annual harvest and harvest rates. Estimates of harvest were from the Service's Harvest Information Program (HIP). Harvest rates were estimated from capture and recovery histories of mourning doves banded as part of the national banding program. In 2011, there were an estimated 308 million mourning doves in the U.S. There were an estimated 96, 161, and 51 million mourning doves in the Eastern, Central, and Western Management Units, respectively.

White-Winged Doves

Two states harbor substantial populations of white-winged dove: Arizona and Texas. California and New Mexico have much smaller populations. The Arizona Game and Fish Department monitors white-winged dove populations by means of a CCS to provide an annual index to population size. It runs concurrently with the Service's Mourning Dove CCS. The index of mean number of white-winged doves heard per route from this survey peaked at 52.3 in 1968, but then declined until about 2000. The index has stabilized at around 25 doves per route in the last few years; in 2011, the mean number of doves heard per route was 24.4. Harvest of white-winged doves in Arizona peaked in the late 1960s at approximately 740,000 birds, and has since declined and stabilized at around 100,000 birds; the preliminary 2011 HIP estimate of harvest was 118,900 birds.

In Texas, white-winged doves continue to expand their breeding range. Nesting by white-winged doves has been recorded in most counties, with new colonies recently found in east Texas. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in white-winged dove abundance. A new distance-based sampling protocol was implemented for Central and South Texas in 2007, and has been expanded each year. In 2010, 4,650 points were surveyed statewide and the urban population of breeding white-winged

doves was estimated at 4.6 million. Additionally, the Texas Parks and Wildlife Department has an operational white-winged dove banding program and has banded 52,001 white-winged doves from 2006 to 2010. The estimated harvest of white-wings in Texas in the 2011 season was 1,552,000 birds. The Texas Parks and Wildlife Department continues to work to improve the scientific basis for management of white-winged doves.

In California, Florida, Louisiana, and New Mexico available BBS data indicate an increasing trend in the population indices between 1966 and 2010. According to HIP surveys, the preliminary harvest estimates for the 2011 season were 77,900 white-winged doves in California, 17,700 in Florida, 13,800 in Louisiana, and 34,800 in New Mexico.

White-Tipped Doves

White-tipped doves occur primarily south of the United States–Mexico border; however, the species does occur in Texas. Monitoring information is presently limited. White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. Distance-based sampling procedures implemented in Texas are also providing limited information on white-tipped dove abundance. Texas is working to improve the sampling frame to include the rural Rio Grande corridor in order to improve the utility of population indices. Annual estimates for white-tipped dove harvest in Texas average between 3,000 and 4,000 birds.

Review of Public Comments

The preliminary proposed rulemaking (April 17 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2012–13 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 17 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which we received written comments are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 17 **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season lengths, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council recommended that the Eastern Mallard Adaptive Harvest Management (AHM) framework be revised on an interim basis for the 2012 and subsequent seasons by adopting the model set recently proposed by the Service, and that model weights be those derived from a retrospective analysis of breeding population changes from 2002–11.

The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the April 17 **Federal Register**, we intend to continue use of Adaptive Harvest Management (AHM) to help determine appropriate duck-hunting regulations for the 2012–13 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards and their breeding habitat (i.e., abundance of ponds) (special hunting restrictions are enacted for certain species, such as canvasbacks, black ducks, scaup, and pintails).

Regarding eastern mallard AHM, as we detailed in the April 17 **Federal Register**, the AHM process used to date to set harvest regulations for eastern mallards is based on an objective of maximizing long-term cumulative harvest and using predictions from six population models representing different hypotheses about the recruitment process and sources of bias in population predictions. The Atlantic Flyway Council and the Service have evaluated the performance of the model set used to support eastern mallard AHM and found that the current models used to predict survival (as a function of harvest) and recruitment (as a function of breeding population size) did not perform adequately, resulting in a consistent over-prediction of mallard population size in 5 of the 6 years. Consequently, we believe that it is necessary to update those population models with more contemporary survival and recruitment information and revised hypotheses about the key factors affecting eastern mallard population dynamics. Further, the Flyway is also reconsidering harvest management objectives and assessing the spatial designation of the eastern mallard breeding population. Recognizing that the development of a fully revised AHM protocol will likely take several years to complete, we developed a revised model set to inform eastern mallard harvest decisions until all of the updates to the eastern mallard AHM protocol are completed. We will use this model set to inform eastern mallard harvest regulations until a fully revised AHM protocol is finalized. Further details on the revised models and results of simulations of this interim harvest policy are available on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov*.

As we previously stated regarding incorporation of a one-step constraint into the AHM process (73 FR 50678, August 27, 2008), this proposal was addressed by the AHM Task Force of the Association of Fish and Wildlife Agencies (AFWA) in its report and recommendations. Because there is no consensus on behalf of the Flyway Councils on how to modify the regulatory alternatives, we believe that the new Supplemental Environmental Impact Statement for the migratory bird hunting program (see NEPA Consideration section in the April 17 **Federal Register**) is an appropriate venue for considering such changes in a more comprehensive manner that involves input from all Flyways.

We will propose a specific regulatory alternative for each of the Flyways during the 2012–13 season after survey information becomes available later this summer. More information on AHM is located at *http://www.fws.gov/*

migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm.

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2011–12.

Service Response: The regulatory alternatives proposed in the April 17 **Federal Register** will be used for the 2012–13 hunting season (see accompanying table at the end of this proposed rule for specifics). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed during the late-season regulations process. For those species with specific harvest strategies (canvasbacks, pintails, black ducks, and scaup), those strategies will again be used for the 2012–13 hunting season.

D. Special Seasons/Species Management

i. Special Teal Seasons

Regarding the regulations for this year, utilizing the criteria developed for the teal season harvest strategy, this year's estimate of 9.2 million blue-winged teal from the traditional survey area indicates that a 16-day September teal season in the Atlantic, Central, and Mississippi Flyways is appropriate for 2012.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Central Flyway Council recommended that we increase the daily bag limit framework from 8 to 15 for North Dakota and South Dakota during the special early Canada goose hunting season in September.

The Pacific Flyway Council recommended increasing the daily bag limit in the Pacific Flyway portion of Wyoming from two to three geese, and increasing the possession limit from four to six birds during the special September season.

Service Response: We agree with the Central Flyway Council's request to increase the Canada goose daily bag limit in North Dakota and South Dakota. Last year, we increased the daily bag limit in North Dakota from 5 to 8 geese in an effort to address increasing numbers of resident Canada geese (76 FR 54052, August 30, 2011). In 2010, we increased daily bag limits in South Dakota, Nebraska, Kansas, and Oklahoma during their special early Canada goose seasons (75 FR 52873, August 30, 2010). The Special Early Canada Goose hunting season is generally designed to reduce or control overabundant resident Canada geese populations. Increasing the daily bag limit from 8 to 15 geese may help both States reduce or control existing high populations of resident Canada geese, which greatly exceed population objectives.

Regarding the increase in the daily bag limit in Wyoming, we agree. As the Pacific Flyway Council notes in their recommendation, the 2011 Rocky Mountain Population (RMP) breeding population index (BPI) was 120,363, with a 3-year average BPI of 139,298. Further, the 2012 RMP Midwinter Index (MWI) of 166,994 showed a 38 percent increase from the previous year's index and was the highest on record. All estimates exceed levels in the management plan which allow for harvest liberalization (80,000). An increase in the daily bag limit is expected to result in minimal increases in Canada goose harvest rates and allow Wyoming to address some localized goose depredation issues.

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2012.

Service Response: We concur. Michigan, beginning in 1998, and Wisconsin, beginning in 1989, have opened their regular Canada goose seasons prior to the Flyway-wide framework opening date to address resident goose management concerns in these States. As we have previously stated (73 FR 50678, August 27, 2008), we agree with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway and will continue to consider the opening dates in both States as exceptions to the general Flyway opening date, to be reconsidered annually. We note that the most recent resident Canada goose estimate for the Mississippi Flyway was 1.61 million birds in 2010, which was 10 percent higher than the 2009 estimate, and well above the Flyway's population goal of 1.18 to 1.40 million birds.

9. Sandhill Cranes

Council Recommendations: The Central and Pacific Flyway Councils recommend using the 2012 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,270 birds as proposed in the allocation formula described in the management plan for this population. The Pacific Flyway Council also recommended an expansion of the hunting area for RMP greater sandhill crane hunting in Arizona and the establishment of a new RMP sandhill crane hunt area in Idaho. (We note that Councils' recommendation to establish a new RMP sandhill crane hunt area in northwest Colorado, identified in the May 17 proposed rule, was withdrawn by both Councils at the June 19–20 SRC meetings.)

Service Response: We agree with the Central and Pacific Flyway Councils' recommendations on the RMP sandhill crane harvest allocation of 1,270 birds for the 2012–13 season, as outlined in the RMP sandhill crane management plan's harvest allocation formula. The objective for the RMP sandhill crane is to manage for a stable population index of 17,000–21,000 cranes determined by an average of the three most recent, reliable September (fall pre-migration) surveys. Additionally, the RMP sandhill crane management plan allows for the regulated harvest of cranes when the population index exceeds 15,000 cranes. In 2011, 17,494 cranes were counted in the September survey and the most recent 3-year average for the RMP sandhill crane fall index is 19,626 birds. Both the new hunt area in Idaho and the expansion of the existing hunt area in Arizona are allowed under the management plan.

14. Woodcock

Last year, we implemented an interim harvest strategy for woodcock for a period of 5 years (2011–15) (76 FR 19876, April 8, 2011). The interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. Utilizing the criteria developed for the interim strategy, the 3-year average for the Singing Ground Survey indices and associated confidence intervals fall within the ''moderate package'' for both the Eastern and Central Management Regions. As such, a ''moderate season'' for both management regions for the 2012–13 woodcock hunting season is appropriate for 2012. Specifics of the interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70-day season for the 2012–13 mourning dove season in the States within the Central Management Unit. They also recommended that the Special White-winged Dove Area in Texas be expanded to Interstate Highway 37 in the 2013–14 season.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of doves, which represents no change from last year's frameworks.

Service Response: In 2008, we accepted and endorsed the interim harvest strategies for the Central, Eastern, and Western Management Units (73 FR 50678, August 27, 2008). As we stated then, the interim mourning dove harvest strategies are a step towards implementing the Mourning Dove National Strategic Harvest Plan (Plan) that was approved by all four Flyway Councils in 2003. The Plan represents a new, more informed means of decision-making for dove harvest management besides relying solely on traditional roadside counts of mourning doves as indicators of population trend. However, recognizing that a more comprehensive, national approach would take time to develop, we requested the development of interim harvest strategies, by management unit, until the elements of the Plan can be fully implemented. In 2009, the interim harvest strategies were successfully employed and implemented in all three Management Units (74 FR 36870, July 24, 2009).

This year, based on the interim harvest strategies and current population status, we agree with the recommended selection of the ''moderate'' season frameworks for doves in the Eastern, Central, and Western Management Units.

Regarding the Central Flyway Council's recommendation to expand the Special White-winged Dove Area in Texas, we support the Council's recommendation to provide additional hunting opportunities for white-winged doves. However, we believe an important tenet of special regulations is that harvest pressure be effectively directed primarily at target stocks. While we believe that the expanding white-winged dove population in Texas can support additional harvest, and support the geographic expansion of the Special White-winged Dove Area, we note that about 40 percent of the harvest in the current Special White-winged Dove Area is comprised of mourning doves. We believe this proportion is higher than that which should occur during a special season which targets white-winged doves. Therefore, to reduce the proportion of non-target species taken during this season, we propose that the bag limit of mourning doves be reduced from 4 to 2 doves within the aggregate bag of 15 doves during this season throughout the Special White-winged Dove Area. The proposed changes would take effect during the 2013–14 hunting season.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preambles of any final rules.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our April 17, and May 17, 2012, proposed rules (77 FR 23094 and 77 FR 29516):

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 13563, 12988, 13175, 13132, and 13211.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2012–13 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: July 12, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2012–13 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2012, and March 10, 2013. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Definitions

Dark geese: Canada geese, white-fronted geese, brant (except in Alaska, California, Oregon, Washington, and the Atlantic Flyway), and all other goose species, except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag limits: Not to exceed 16 consecutive hunting days in the Atlantic, Mississippi, and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 22). The daily bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and

would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Long-Tailed Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, Florida, Georgia, New Jersey, New York (Long Island Zone only), North Carolina, Rhode Island, and South Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag limits: Not to exceed 15 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during any general season, shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota, where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Central Flyway

General Seasons

In Kansas, Nebraska, Oklahoma, South Dakota, and Texas, Canada goose seasons of up to 30 days during September 1–30 may be selected. In Colorado, New Mexico, North Dakota, Montana, and Wyoming, Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese, except in Kansas, Nebraska, and Oklahoma, where the daily bag limit may not exceed 8 Canada geese and in North Dakota and South Dakota, where the daily bag limit may not exceed 15 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Shooting Hours: One-half hour before sunrise to sunset, except that during September 1–15 shooting hours may extend to one-half hour after sunset if all other waterfowl seasons are closed in the specific applicable area.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 4.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW., Goose Management Zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2, and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese during the period September 1–15. This season is subject to the following conditions:

A. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

B. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: A season not to exceed 37 consecutive days may be selected in the designated portion of northwestern Minnesota (Northwest Goose Zone).

Daily Bag Limit: 2 sandhill cranes.

Permits: Each person participating in the regular sandhill crane season must

have a valid Federal or State sandhill crane hunting permit.

Experimental Seasons in the Mississippi Flyway

Outside Dates: Between September 1 and January 31.

Hunting Seasons: A season not to exceed 30 consecutive days may be selected in Kentucky.

Daily Bag Limit: Not to exceed 2 daily and 2 per season.

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Mississippi Flyway Council.

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane season must have a valid Federal or State sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 consecutive days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other Provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils, with the following exceptions:

A. In Utah, 100 percent of the harvest will be assigned to the RMP quota;

B. In Arizona, monitoring the racial composition of the harvest must be conducted at 3-year intervals;

C. In Idaho, 100 percent of the harvest will be assigned to the RMP quota; and

D. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and the last Sunday in January (January 27) in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and the last Sunday in January (January 27) on clapper, king, sora, and Virginia rails.

Hunting Seasons: Seasons may not exceed 70 days, and may be split into 2 segments.

Daily Bag limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the 2 species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 22) and January 31.

Hunting Seasons and Daily Bag limits: Seasons may not exceed 45 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 36 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

For all States except Texas:

Hunting Seasons and Daily Bag limits: Not more than 70 days, with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas:

Hunting Seasons and Daily Bag limits: Not more than 70 days, with a daily bag limit of 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves.

Zoning and Split Seasons: Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited take of mourning and white-tipped doves may also occur during that special season (see Special White-winged Dove Area).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between the Friday nearest September 20 (September 21), but not earlier than September 17, and January 25.

C. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Special White-Winged Dove Area in Texas:

In addition, Texas may select a hunting season of not more than 4 days for the Special White-winged Dove Area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 15 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and no more than 2 may be white-tipped doves.

Western Management Unit

Hunting Seasons and Daily Bag limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days, with a daily bag limit of 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning and white-winged doves in the aggregate.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

A. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16.

B. On Middleton Island in Unit 6, a special, permit-only Canada goose season may be offered. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

C. In Units 6–B, 6–C, and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose (as defined above) harvest reaches 40.

D. In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

A. All seasons are by registration permit only.

B. All season framework dates are September 1–October 31.

C. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

D. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

E. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swans per permit. No more than 1 permit may be issued per hunter per season.

F. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit, with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 20 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 10 may be Zenaida doves and 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Seasons: The season is closed on the white-crowned pigeon and the plain pigeon, which are protected by the Commonwealth of Puerto Rico.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves or pigeons.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29. These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29. Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of a line extending east from the Texas border along State Highway 12 to U.S. Highway 190, east along U.S. 190 to Interstate Highway 12, east along Interstate 12 to Interstate Highway 10, then east along Interstate Highway 10 to the Mississippi border.

South Zone—The remainder of the State.

Mississippi

North Zone—That portion of the State north and west of a line extending west from the Alabama State line along U.S. Highway 84 to its junction with State Highway 35, then south along State Highway 35 to the Louisiana State line.

South Zone—The remainder of Mississippi.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio,

southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to FM 649 in Randado; south on FM 649 to FM 2686; east on FM 2686 to FM 1017; southeast on FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—The remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—The remainder of the State.

Maryland

Eastern Unit—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; and that part of Anne Arundel County east of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State line.

Western Unit—Allegany, Baltimore, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties and that part of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that part of Prince George's County west of Route 3 and Route 301; and that part of Charles County west of Route 301 to the Virginia State line.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Eastern Long Island Goose Area (North Atlantic Population (NAP) High Harvest Area)—That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (Resident Population (RP) Area)—That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area)—That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Pennsylvania

Southern James Bay Population (SJBP) Zone—The area north of I–80 and west of I–79, including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck Zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

Vermont

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area north and west of the line extending

from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone—That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone—The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Arkansas

Early Canada Goose Area—Baxter, Benton, Boone, Carroll, Clark, Conway, Crawford, Faulkner, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Madison, Marion, Miller, Montgomery, Newton, Perry, Pike, Polk, Pope, Pulaski, Saline, Searcy, Sebastian, Sevier, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North September Canada Goose Zone—That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central September Canada Goose Zone—That portion of the State south of the North September Canada Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South September Canada Goose Zone—That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central September Canada Goose Zone—The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Iowa

North Zone—That portion of the State north of U.S. Highway 20.

South Zone—The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone—Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; then south and east along County Road E2W to Highway 920; then north along Highway 920 to County Road E16; then east along County Road E16 to County Road W58; then south along County Road W58 to County Road E34; then east along County Road E34 to Highway 13; then south along Highway 13 to Highway 30; then east along Highway 30 to Highway 1; then south along Highway 1 to Morse Road in Johnson County; then east along Morse Road to Wapsi Avenue; then south along Wapsi Avenue to Lower West Branch Road; then west along Lower West Branch Road to Taft Avenue; then south along Taft Avenue to County Road F62; then west along County Road F62 to Kansas Avenue; then north along Kansas Avenue to Black Diamond Road; then west on Black Diamond Road to Jasper Avenue; then north along Jasper Avenue to Rohert Road; then west along Rohert Road to Ivy Avenue; then north along Ivy Avenue to 340th Street; then west along 340th Street to Half Moon Avenue; then north along Half Moon Avenue to Highway 6; then west along Highway 6 to Echo Avenue; then north along Echo Avenue to 250th Street; then east on 250th Street to Green Castle Avenue; then north along Green Castle Avenue to County Road F12; then west along County Road F12 to County Road W30; then north along County Road W30 to Highway 151; then north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone—Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; then south along R38 to Northwest 142nd Avenue; then east along Northwest 142nd Avenue to Northeast 126th Avenue; then east along Northeast 126th Avenue to Northeast 46th Street; then south along Northeast 46th Street to Highway 931; then east along Highway 931 to Northeast 80th Street; then south along Northeast 80th Street to Southeast 6th Avenue; then west along Southeast 6th Avenue to Highway 65; then south and west along Highway 65 to Highway 69 in Warren County; then south along Highway 69 to County Road G24; then west along County Road G24 to Highway 28; then southwest along Highway 28 to 43rd Avenue; then north along 43rd Avenue to Ford Street; then west along Ford Street to Filmore Street; then west along Filmore Street to 10th Avenue; then south along 10th Avenue to 155th Street in Madison County; then west along 155th Street to Cumming Road; then north along Cumming Road to Badger Creek Avenue; then north along Badger Creek Avenue to County Road F90 in Dallas County; then east along County Road F90 to County Road R22; then north along County Road R22 to Highway 44; then east along Highway 44 to County Road R30; then north along County Road R30 to County Road F31; then east along County Road F31 to Highway 17; then north along Highway 17 to Highway 415 in Polk County; then east along Highway 415 to Northwest 158th Avenue; then east along Northwest 158th Avenue to the point of beginning.

Cedar Falls/Waterloo Goose Zone—Includes those portions of Black Hawk County bounded as follows: Beginning at the intersection of County Roads C66 and V49 in Black Hawk County, then south along County Road V49 to County Road D38, then west along County Road D38 to State Highway 21, then south along State Highway 21 to County Road D35, then west along County Road D35 to Grundy Road, then north along Grundy Road to County Road D19, then west along County Road D19 to Butler Road, then north along Butler Road to County Road C57, then north and east along County Road C57 to U.S. Highway 63, then south along U.S. Highway 63 to

County Road C66, then east along County Road C66 to the point of beginning.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; then west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; then north along the east boundary of Dahlgren Township to U.S. Highway 212; then west along U.S. Highway 212 to State Trunk Highway (STH) 284; then north on STH 284 to County State Aid Highway (CSAH) 10; then north and west on CSAH 10 to CSAH 30; then north and west on CSAH 30 to STH 25; then east and north on STH 25 to CSAH 10; then north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; then east on CSAH 2 to U.S. Highway 61; then south on U.S. Highway 61 to State Trunk Highway (STH) 97; then east on STH 97 to the intersection of STH 97 and STH 95; then due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: Beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; then along the U.S. Highway 52 to State Trunk Highway (STH) 57; then along STH 57 to the municipal boundary of Kasson; then along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; then along CSAH 13 to STH 30; then along STH 30 to U.S. Highway 63; then along U.S. Highway 63 to the south boundary of the State; then along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; then along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to I–94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to US Highway 81, then south on US Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

North Dakota

Missouri River Canada Goose Zone—The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; then north on ND Hwy 6 to I–94; then west on I–94 to ND Hwy 49; then north on ND Hwy 49 to ND Hwy 200; then north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); then north on that section line to the southern shoreline to Lake Sakakawea; then east along the southern shoreline (including Mallard Island) of Lake Sakakawea to US Hwy 83; then south on US Hwy 83 to ND Hwy 200; then east on ND Hwy 200 to ND Hwy 41; then south on ND Hwy 41 to US Hwy 83; then south on US Hwy 83 to I–94; then east on I–94 to US Hwy 83; then south on US Hwy 83 to the South Dakota border; then west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Special Early Canada Goose Unit—Entire State of South Dakota *except* the Counties of Bennett, Gregory, Hughes, Lyman, Perkins, and Stanley; that portion of Potter County west of US

Highway 83; that portion of Bon Homme, Brule, Buffalo, Charles Mix, and Hyde County south and west of a line beginning at the Hughes-Hyde County line of SD Highway 34, east to Lees Boulevard, southeast to SD 34, east 7 miles to 350th Avenue, south to I–90, south and east on SD Highway 50 to Geddes, east on 285th Street to US Highway 281, south on US Highway 281 to SD 50, east and south on SD 50 to the Bon Homme-Yankton County boundary; that portion of Fall River County east of SD Highway 71 and US Highway 385; that portion of Custer County east of SD Highway 79 and south of French Creek; that portion of Dewey County south of BIA Road 8, BIA Road 9, and the section of US 212 east of BIA Road 8 junction.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (SW Quota Zone)—Pacific County.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

Maryland

Special Teal Season Area—Calvert, Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties; that part of Anne Arundel County east of Interstate 895, Interstate 97, and Route 3; that part of Prince Georges County east of Route 3 and Route 301; and that part of Charles County east of Route 301 to the Virginia State Line.

Mississippi Flyway

Indiana

North Zone—That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone—That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone—That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone—That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone—That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone—The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area—Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone—That portion of the State west of U.S. 283.

Early Zone—That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County

Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then north on US–283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K–128.

Late Zone—That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with US–36, then east on US–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with US–24, then west on US–24 to its junction with US–281, then north on US–281 to its junction with US–36, then west on US–36 to its junction with US–183, then south on US–183 to its junction with US–24, then west on US–24 to its junction with K–18, then southeast on K–18 to its junction with US–183, then south on US–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with US–56, then southwest on US–56 to its junction with K–19, then east on K–19 to its junction with US–281, then south on US–281 to its junction with US–54, then west on US–54 to its junction with US–183, then north on US–183 to its junction with US–56, then southwest on US–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with US–400, then northwest on US–400 to its junction with US–283, then south on US–283 to its junction with the Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with US–77, then north on US–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with US–35, then northeast on US–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone—That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with US–35, then southwest on US–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Nebraska

Special Teal Season Area—That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

High Plains—That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1—Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2—The area south of Zone 1 and north of Zone 3.

Zone 3—Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Road; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4—Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south

to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone—That portion of the State north of I–40 and U.S. 54.

South Zone—The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone—In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone—Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone—That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone—All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone—The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

Mississippi Valley Population (MVP)-Upper Peninsula Zone—The MVP-Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP-Lower Peninsula Zone—The MVP-Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch County, north continuing along the western border of Branch and Calhoun Counties to the northwest corner of Calhoun County, then east to the southwest corner of Eaton County, then north to the southern border of Ionia County, then east to the southwest corner of Clinton County, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm Counties to the southern border of Isabella county, then east to the southwest corner of Midland County, then north along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to I–75/U.S. 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone—The rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Mississippi Flyway

Minnesota

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I–35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Zone A—That portion of Texas lying west of a line beginning at the international toll bridge at Laredo, then northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, then north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line.

Zone B—That portion of Texas lying within boundaries beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, then northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in the town of Junction, then north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, then east along U.S. Highway 62 to the Texas-Oklahoma State line, then south along the Texas-Oklahoma State line to the south bank of the Red River, then eastward along the vegetation line on the south bank of the Red River to U.S. Highway 81.

Zone C—The remainder of the State, except for the closed areas.

Closed areas—(A) That portion of the State lying east and north of a line beginning at the junction of U.S. Highway 81 and the Texas-Oklahoma State line, then southeast along U.S. Highway 81 to its junction with U.S. Highway 287 in Montague County, then southeast along U.S. Highway 287 to its junction with Interstate Highway 35W in Fort Worth, then southwest along Interstate Highway 35 to its junction with U.S. Highway 290 East in Austin, then east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, then south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, then south on Interstate Highway 45 to State Highway 342, then to the shore of the Gulf of Mexico, and then north and east along the shore of the Gulf of Mexico to the Texas-Louisiana State line.

(B) That portion of the State lying within the boundaries of a line beginning at the Kleberg-Nueces County line and the shore of the Gulf of Mexico, then west along the County line to Park Road 22 in Nueces County, then north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, then west and north along State Highway 358 to its junction with State Highway 286, then north along State Highway 286 to its junction with Interstate Highway 37, then east along Interstate Highway 37 to its junction with U.S. Highway 181, then north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, then north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, then south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, then north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, then south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, then south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and then south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces County line.

Wyoming

Regular Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, and portions of Johnson and Sheridan Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—All of Big Horn, Hot Springs, Park and Washakie Counties.

Pacific Flyway

Arizona

Special Season Area—Game Management Units 28, 30A, 30B, 31, and 32.

Idaho

Special Season Area—See State regulations.

Montana

Special Season Area—See State regulations.

Utah

Special Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Uinta County Area—That portion of Uinta County described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2012-13 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 2012–17728 Filed 7–19–12; 8:45 am]
BILLING CODE 4310–55–C



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Part VI

The President

Proclamation 8841—Captive Nations Week, 2012
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Presidential Determination No. 2012–12 of July 12, 2012—Unexpected Urgent Refugee and Migration Needs

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Title 3—

The President

Proclamation 8841 of July 16, 2012

Captive Nations Week, 2012

By the President of the United States of America

A Proclamation

When President Dwight D. Eisenhower first proclaimed Captive Nations Week amidst an escalating Cold War, he affirmed that ''the citizens of the United States are linked by bonds of family and principle to those who love freedom and justice on every continent.'' Our world has changed dramatically since 1959, but those unbreakable bonds endure. During Captive Nations Week, America renews our abiding ties to all peoples who struggle to claim their inalienable rights.

From the Baltic Sea to the Balkan Peninsula, once-captive nations inspired the world when bold patriots stepped forward to regain their countries' sovereignty and their citizens' dignity. Today, we see the same courage in protesters who brave the line of fire to sound the call for reform. We see the same fierce hope in those who defy censorship and reach beyond an electronic curtain to connect with people around the world. As individuals rise to demand their universal rights, the United States stands with them in pursuit of equality, justice, and freedom.

As strongly as my Administration condemns tyranny, we embrace emerging democracies and welcome the chance to work with those who seek to restore their peoples' liberty. With our partners in the international community, we will continue striving to advance human rights, grow prosperity, and meet mutual challenges with global solutions. And as long as there are people who live in the darkness of oppression, America will remain their steadfast friend, linked by a common dream and our common ideals.

The Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as ''Captive Nations Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim July 15 through July 21, 2012, as Captive Nations Week. I call upon the people of the United States to reaffirm our deep ties to all governments and people committed to freedom, dignity, and opportunity for all.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of July, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



[FR Doc. 2012–17948
Filed 7–19–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Memorandum of July 11, 2012

Delegation of Certain Functions Under Section 570(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997

Memorandum for the Secretary of State

Consistent with the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the function and authority specified in section 570(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208) to waive and make the specified certification to the Congress regarding the prohibition on new investment in Burma under section 570(b) of the Act.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 11, 2012

[FR Doc. 2012–17956
Filed 7–19–12; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2012–12 of July 12, 2012

Unexpected Urgent Refugee and Migration Needs

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (the ''Act''), as amended, (22 U.S.C. 2601(c)(1)), I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $10 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and nongovernmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to the humanitarian crisis resulting from conflict in Northern Mali.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 12, 2012

[FR Doc. 2012–17964
Filed 7–19–12; 11:15 am]
Billing code 4710–10–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 3902/P.L. 112–145
District of Columbia Special Election Reform Act (July 18, 2012; 126 Stat. 1133)

S. 2061/P.L. 112–146
Former Charleston Naval Base Land Exchange Act of 2012 (July 18, 2012; 126 Stat. 1135)

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